

MASTER AGREEMENT



Document ID: 00003467 Fiscal Year: 2017
Version: 1 New
Buyer: Kathy Madary *KM*
Buyer Phone: 410-887-3888
Effective Date: 01/17/17 Expiration Date: 01/16/18
Date Printed: January 25, 2017

BALTIMORE COUNTY, MARYLAND
Office of Budget and Finance

Vendor ID: VC000923
Constellation Newenergy
9960 Corp Campus Dr 200
Louisville KY 40223-4055

Document Description: Natural Gas Supply Services

Approved by County Council: 01-17-2017

Not to Exceed:

Reason for Modification:

Extended Description:

RFP #P-165, opened 10/07/2016. Incorporating the BRCPC/Baltimore County Solicitation #P-165, dated 10/07/2016, as amended by Amendments 1, 2, and 3, including, but not limited to, the Proposal Response, Procurement Affidavit, Prime Contractor Minority Information, MBE/WBE documents, and Insurance, as applicable. Supercedes Master Agreement #2180, which expires 02/28/2017. Effective date of new agreement: March 1, 2017. The maximum compensation is based on County Council approved appropriation.

This solicitation resulted in separate contract awards for each BRCPC member and the Montgomery County Board of Education.

This is not an order to ship (or begin service). A Delivery Order (DO) or Purchase Order (PO) must be issued before you are authorized to ship (or begin service). This is a notice that the Master Agreement (MA) referenced above has been awarded to you based on the bid (or proposal) you submitted. All terms, conditions and specifications of the solicitation will apply to all orders placed from this agreement. Any agency authorized to purchase from this agreement must issue an order and reference the Master Agreement number, line number and commodity item number for each item. Changes in items to be furnished are not permitted (unless approved by the Purchasing Division prior to delivery). Prior approval must also be obtained before distributors can be added or deleted. If a distributor list was submitted, the contractor must send copies of this award to each distributor. Quantities listed are estimated and no quantities are guaranteed. The contractor must supply actual requirements ordered at the Master Agreement price awarded.

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Line No.	Commodity	UoM	Unit Price	Discount % Off Catalog \$	Contract Amount
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1	72033	DTH	\$0.0500	0.0000	\$0.00
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Service fee, supply services, implementation of BRCPC natural gas procurement strategy, priced per dekatherm, as per specifications

2	72033	%	\$1.5000	0.0000	\$0.00
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Carrying Charge on Storage Gas for DRS, as per specifications.

Published Index is 3 Month Libor

Adder to index (if any) - noted as annual percentage rate, as per specifications.

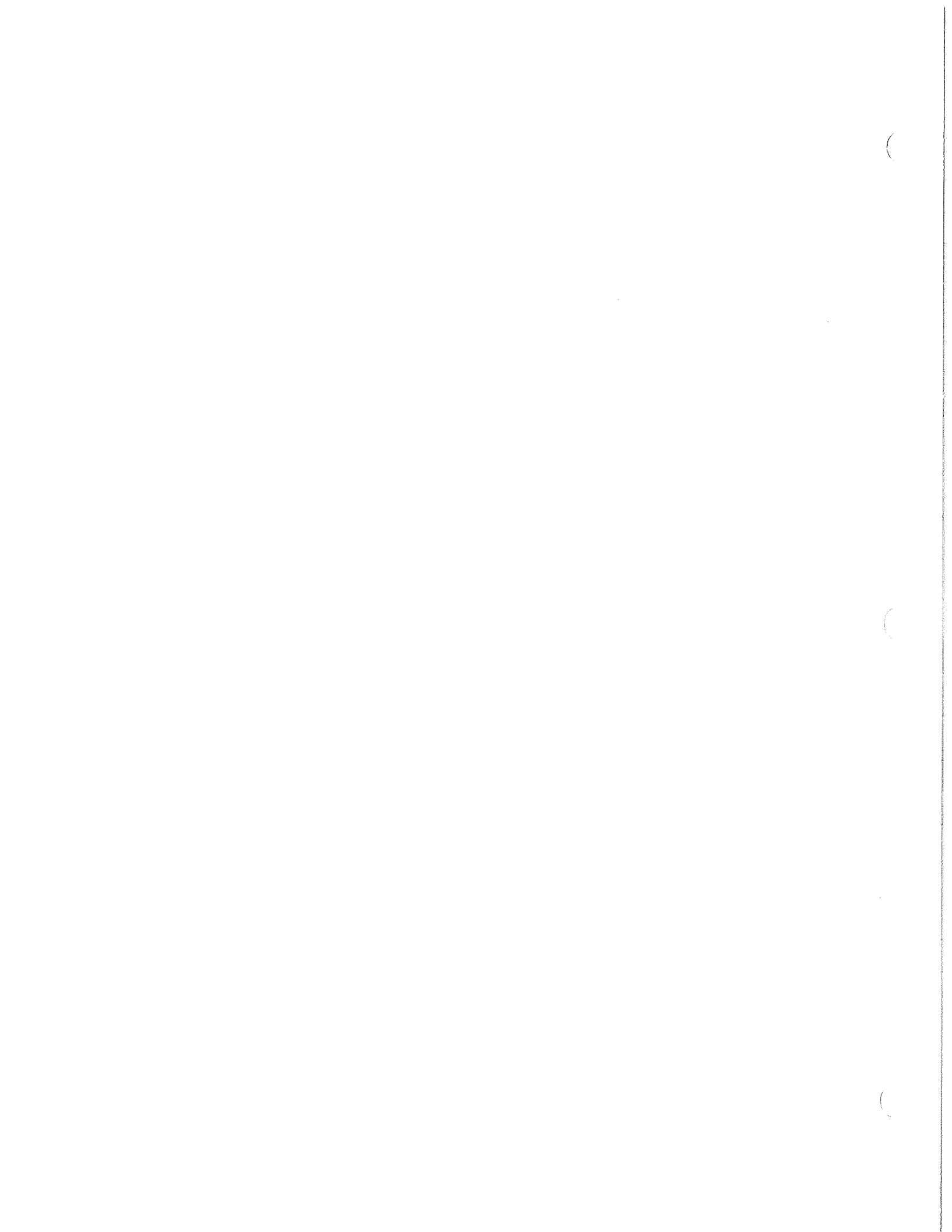
Renewal Period No: 1	Renewal Begin Date: 01/17/18	Renewal End Date: 01/16/19
Renewal Period No: 2	Renewal Begin Date: 01/17/19	Renewal End Date: 01/16/20
Renewal Period No: 3	Renewal Begin Date: 01/17/20	Renewal End Date: 01/16/21
Renewal Period No: 4	Renewal Begin Date: 01/17/21	Renewal End Date: 01/16/22
Renewal Period No: 5	Renewal Begin Date: 01/17/22	Renewal End Date: 01/16/23
Renewal Period No: 6	Renewal Begin Date: 01/17/23	Renewal End Date: 01/16/24
Renewal Period No: 7	Renewal Begin Date: 01/17/24	Renewal End Date: 01/16/25
Renewal Period No: 8	Renewal Begin Date: 01/17/25	Renewal End Date: 01/16/26
Renewal Period No: 9	Renewal Begin Date: 01/17/26	Renewal End Date: 01/16/27

1. Purchases are subject to the Baltimore County Charter and Article 10, Title 2 of the Baltimore County Code, 2003, as amended. Baltimore County will not be responsible for any goods delivered or services rendered unless covered by an official order signed by the Purchasing Agent or his/her designee. No change, modification, or revision shall be binding upon Baltimore County unless made in writing by the Purchasing Agent or his/her designee. Contractor shall not assign its obligations to perform hereunder in whole or in part without the prior written consent of the Purchasing Agent or his/her designee.
 2. If this Master Agreement, Contract, or Purchase Order is for an amount of \$25,000 or less, the County Executive and the County Administrative Officer are not required by the Baltimore County Code to sign. Accordingly, any such Master Agreement, Contract or Purchase Order that is for \$25,000 or less shall be signed by the Director of the Office of Budget and Finance or his designee as allowed for in the County Code.
 3. The County's Solicitation, Request for Proposal, or Request for Bid, as applicable, shall be incorporated herein in its entirety.
 4. The Contractor may not and shall not amend or modify the terms and conditions of this Master Agreement, Contract, or Purchase Order, as applicable, unless such amendment or modification is in writing and signed by a legally authorized signatory of the Contractor and the County, and the Baltimore County Office of Law.
 5. Invoicing: Invoices must be submitted, in duplicate, to the Office of Budget and Finance, Disbursements Section, Room 148, 400 Washington Avenue, Towson, MD 21204-4665. Invoices must show the vendor's federal tax identification number (FEIN) or social security number, as appropriate and order number and line number(s) that correspond with the order(s). Cash discount periods will be computed either from the date of delivery and acceptance of the goods ordered, or the date of receipt of correct and proper invoices prepared in accordance with terms of Baltimore County's order, whichever date is later. Under no circumstances will interest be paid.
 6. Incorporation by reference: If this purchase order is the result of a written solicitation, the solicitation and response are hereby incorporated by reference.
 7. County Council Approval: Prior approval of the Baltimore County Council is required on contracts for services in excess of \$25,000 per year or in excess of two years.
 8. Fee Prohibition: The contractor warrants and represents that it has not employed or engaged any person or entity to solicit or secure this agreement, and that it has not paid, or agreed to pay any person or entity a fee or any other consideration contingent on the making of this agreement. If any suit, claim, or demand shall arise concerning such a fee, the contractor agrees to indemnify, hold harmless, and defend the County from all such claims, suits, or demands.
 9. Discrimination Prohibited: In the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this agreement, the Contractor shall not discriminate against persons because of race, color, religion, sex, age, political affiliation, national origin, marital status, sexual orientation, gender identity or expression, genetic information, status as a veteran, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.
 10. Applicable Law: This agreement shall be governed and construed in accordance with the laws and regulations of the State of Maryland and Baltimore County.
 11. Any litigation arising out of or relating in any way to this agreement or the performance thereunder shall be brought only in the courts of Maryland, and the Contractor hereby irrevocably consents to such jurisdiction. To the extent that the County is a party to any litigation arising out of or relating in any way to this agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in the courts of the State of Maryland.
 12. Funding Out: If funds are not appropriated or otherwise made available to support continuation of this agreement in any fiscal year, the County shall have the right to terminate the agreement without prior notice to the contractor and without any obligation or penalty.
 13. Material Safety Data Sheet: If products to be provided to the County contain any substances that could be hazardous or injurious to a person's health, a material safety data sheet (MSDS) must be provided to the Purchasing Division, 400 Washington Avenue, Room 148, Towson, MD 21204-4665. This applies also to any product used by a contractor when providing a service to the County.
 14. Recycled and Recyclable Products: The contractor agrees that it will not use packaging materials made of non-recyclable Styrofoam (Polystyrene). Additionally, any materials used in packing to cushion, protect and ship are to be made of recycled, recyclable or biodegradable materials.
 15. Copiers, scanners, printers, facsimile equipment and any other office equipment that contain hard drives that have the capability to store data internally, will be required to provide overwrite capability with an option to return hard drives to the County for proper disposal at the end of life.
 16. Termination for Convenience: The County may terminate this agreement, in whole or in part, without cause, by providing written notice thereof to the contractor. In the event of termination, without cause, the County shall advise the contractor in writing of the termination date and of work to be performed during the final days prior to termination. The contractor shall be paid for all reasonable costs incurred by the contractor up to the date of termination set forth in the written notice of termination. The contractor will not be reimbursed for any anticipatory profits, which have not been earned up to the date of termination. Payments to be provided on a lump sum basis shall be prorated by the County based on the services rendered or goods delivered up to the date of termination set forth in the written notice.
 17. Termination for Default: In addition to other available rights and remedies, the County shall have the right upon the happening of any default, without providing notice to the contractor: 1) To terminate this agreement immediately, in whole or in part; 2) To suspend the contractor's authority to receive any undisbursed funds; and/or 3) To proceed at any time or from time to time to protect and enforce all rights and remedies available to the County, by suit or any other appropriate proceedings, whether for specific performance or any covenant, term or condition set forth in the contract, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations. Upon termination of this agreement for default, the County may elect to pay the contractor for services provided or goods delivered up to the date of termination, less the amount of damages caused by the default, all as determined by the County in its sole discretion. If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements hereunder.
 18. Indemnification: The contractor shall indemnify and hold harmless the County, its employees, agents and officials from any and all liabilities, claims, suits, or demands including attorney's fees and court costs which may be incurred or made against the county, its employees, agents or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of the agreement. The contractor shall not be responsible for acts of gross negligence or willful misconduct committed by the County.
- The contractor shall also indemnify and hold harmless the County, its employees, agents and officials from any and all liabilities, claims, suits, or demands including attorney's fees and court costs which may be made against the County, its employees, agents or officials by any third party arising from the alleged violation of any third party's trade secrets, proprietary information, trademark, copyright, patent rights, or intellectual property rights in connection with the agreement.
19. Defense: Unless notified in writing by the County to the contrary, the contractor shall provide defense for the County, its employees, agents and officials and in doing so the contractor shall allow the County to participate in said defense of the County, its employees, agents and officials, to the extent and as may be required by the County and the contractor shall cooperate with the County in all aspects in connection therewith. All filings, actions, settlements, and pleadings shall be provided to the County for comment and review prior to filing or entering thereof. No filing, action, settlement or pleading shall be filed or entered without the prior consent and approval of the County.
 20. Property Lost, Damaged or Destroyed: Any deliverables to be provided by the contractor will remain at the contractor's risk until written acceptance by Baltimore County; and the contractor will replace, at the contractor's expense, all deliverables lost, damaged or destroyed by any cause whatsoever.

Reviewed and Approved:
 By: [Signature]
 Director of Budget and Finance
 or Director's designee

Baltimore County, Maryland
 By: [Signature]
 County Administrative Officer

Reviewed for Legal Sufficiency
 (based upon typeset document)
 By: _____
 Baltimore County Office of Law
 (approval does not convey approval or disapproval of substantive nature of the transaction)



ORIGINAL

CONTRACT

FB

THIS AGREEMENT made this 28th day of November, 2016, (the "Agreement") is by and between **BALTIMORE COUNTY, MARYLAND**, a body corporate and politic, (hereinafter the "Entity") and **CONSTELLATION NEWENERGY – GAS DIVISION, LLC**, 9960 Corporate Campus Drive, Suite 2000, Louisville, Kentucky, 40223 (hereinafter the "Contractor").

WHEREAS, the Entity is a governmental entity, involved with numerous other governmental entities, in the cooperative purchasing committee of the Baltimore Metropolitan Council, Inc. (each entity including the Entity is a "Participating Entity", and all entities, collectively, are the "Participating Entities") constituting the Baltimore Regional Cooperative Purchasing Committee ("BRCPC"); and

WHEREAS, BRCPC issued Request for Proposal No. P-165 on behalf of the Participating Entities, and each Participating Entity will enter into its own individual contract with the Contractor, as successful bidder; and

WHEREAS, each such individual contract represents an independent contract between that Participating Entity and the Contractor, and therefore, any contract action by one Participating Entity, including, but not limited to, termination for cause or convenience, shall not bind or create any legal obligation, duty or responsibility of any kind or extent to BRCPC or any other Participating Entity; and

WHEREAS, the said Contractor, hereby covenants and agrees to perform all services and deliver all goods, in strict and entire conformity with Attachment A entitled, "Services to be Performed/Goods To Be Provided", and the Request for Proposal No. P-165, as amended (the "RFP"), and the Contractor's response thereto dated October 7, 2016 and email dated October 21, 2016 (collectively, the "Bid").

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. **Contractor's Duties.**

1.1 The Contractor, in consideration of the payments hereinafter specified and agreed to be made by the Entity, hereby covenants and agrees to perform all services and provide all goods, in strict and entire conformity with Attachment A, the RFP, and the Bid.

1.2 The Contractor shall be an independent Contractor and not an employee of the Entity, and shall be responsible for the reporting and remittance of all state and federal taxes of any kind or nature. The Contractor shall provide the services and goods, as applicable, with due care and in a manner satisfactory to the Entity, and in accordance with all applicable professional standards, laws, regulations and the Bid.

1.3 Notwithstanding any other terms or provisions of this Agreement, in the event the Entity is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the General Assembly of Maryland or the Entity's legislative authority, by a court of competent jurisdiction or by administrative

delay not due to the fault of the Entity (and its officials, employees or agents) shall not be liable directly or indirectly for any claims, losses, costs, or expenses caused to or suffered by the Contractor or any other person in connection with this Agreement or as a result of such prevention, restriction or delay.

2. Compensation.

2.1 In consideration of the services to be performed and goods to be provided by the Contractor, the Contractor shall be paid in accordance with the unit prices on the price sheets attached hereto as Attachment A-1.

2.2 The Contractor shall submit invoices to the Entity monthly for the services performed and the goods provided to the Entity during the prior month. The Contractor's invoices shall reflect the:

- Contractor's name
- Address
- Federal tax identification number
- Order number and line number(s) that correspond with resulting orders
- Services performed and goods provided during the preceding billing period

Original invoices shall be submitted to Baltimore County Office of Budget and Finance, Disbursements Division, 400 Washington Avenue, Room 148, Towson, MD 21204. Invoices in the proper form and approved by the Entity shall be paid by the Entity within thirty (30) days of receipt thereof. The Entity reserves the right to approve such invoices, in its sole discretion, and to request such detail and additional information as the Entity, in its discretion deems appropriate.

2.3 In no event shall the compensation paid to the Contractor exceed the sum of the Entity's approved appropriation for this Agreement in any fiscal year. If any portion of any term of this Agreement extends beyond the Entity's then-current fiscal year, this Agreement is subject to availability and appropriation of funds for that portion of the term that extends beyond the Entity's then-current fiscal year.

2.4 Except as may be mutually agreed upon by the parties hereto in writing, the Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services rendered or to be rendered or goods provided or to be provided hereunder. The parties hereto further agree that the Entity shall have no obligation to reimburse, pay directly, or otherwise satisfy, any losses, costs or expenses of the Contractor in connection with the performance of its obligations under this Agreement, including, but not limited to, the loss, cost and/or expense of any insurance, license fees, hedging security, or hedging-related items.

3. Term.

Initial LOS 3.1 This Agreement shall be effective on March 1, 2017 and shall continue through February 28, 2018 (hereinafter defined as the "Initial Term") at which time the Entity may exercise its option to renew as set forth in Section 3.2 below, unless the Agreement is terminated pursuant to Article 5 hereof.

3.2 The Entity reserves the sole right to renew this Agreement for nine (9) years, in one-year increments, (each a "Renewal Term") on the same terms and conditions set forth herein. The Entity will automatically renew this Agreement at the end of the Initial Term and each Renewal Term (except for the last) unless it provides sixty (60) days' written notice of non-renewal to the Contractor prior to the end of the then-current term. Unless set forth in a written amendment, the compensation and manner of payment set forth in Section 2 shall remain unchanged. If the Entity provides notice of non-renewal to Contractor and there are outstanding purchases of natural gas that extend beyond the end of the then-current Initial Term or Renewal Term, such outstanding purchases shall be terminated and liquidated by Contractor as set forth in Paragraph 5.4 below.

4. Contractor's Representations and Warranties. The Contractor hereby represents the following:

4.1 The Contractor is a limited liability company, duly formed and validly existing under the laws of the State of Kentucky and is qualified to do business and is in good standing in the State of Maryland.

4.2 The Contractor has the power and authority to consummate the obligations and responsibilities contemplated hereby, and has taken all necessary action to authorize the execution of this Agreement and the delivery and performance required under this Agreement.

4.3 The Contractor and the person executing this Agreement for the Contractor warrants that he is duly and legally authorized by the Contractor to execute this Agreement on the Contractor's behalf.

4.4 The services and goods to be provided under this Agreement shall be performed and provided competently and with due care, and in accordance with all applicable laws, codes, ordinances, regulations, executive orders and licensing requirements. The parties understand and agree that this Agreement may be for the provision of a combination of goods and services. In such case, the Contractor specifically disclaims all warranties, expressed or implied, including any warranty of merchantability and fitness for a particular purpose and use

4.5 The Contractor has obtained and shall continue to maintain, at its own cost, such licenses and certifications as are necessary to perform the services and provide the goods under this Agreement, and shall present such licenses and certifications to the Entity upon its request for the same.

4.6 The financial condition of the Contractor shall be satisfactory to the Entity and if requested, the Contractor shall have delivered to Entity such written statements, schedules or reports in such form, containing such information and accompanied by such documents as may be satisfactory to the Entity concerning the financial condition of the Contractor. Such documentation shall fairly and accurately present the financial condition of the Contractor as of their date and the results of its operations for the period then ended. There has been no material adverse change in the financial condition of the Contractor or the results of its operations since the date of such financial statements.

4.7 All representations and warranties made in the Procurement Affidavit, the Contract Affidavit (Attachment B, attached hereto and incorporated herein) and the Bid remain true and correct in all respects.

5. Termination.

5.1 Termination for Convenience.

5.1.1 The Entity may terminate this Agreement, in whole or in part, without cause, by providing written notice thereof to the Contractor at least thirty (30) days prior to the intended date of termination at the address set forth below, or at such other address as may be later designated by the Contractor in writing. The Contractor acknowledges that the absence of a reciprocal right of termination for convenience does not render this Agreement illusory or unenforceable.

5.1.2 In the event of termination, without cause, the Contractor shall be paid for all reasonable costs incurred by the Contractor up to the date of termination set forth in the written notice of termination. Payment shall be made in accordance with the provisions of Article 2 of this Agreement.

5.2 Termination for Default.

5.2.1 The Entity or Contractor may terminate this Agreement, for default, as set forth in Article 7 hereof, by providing written notice thereof to the other party at least seven (7) days prior to the intended date of termination at the address set forth in Article 27 of this Agreement, or at such other address as may be later designated by the Contractor in writing in accordance with Article 26 of this Agreement.

5.2.2 In the event of termination for default, the Entity shall have the rights and remedies hereinafter set forth.

5.3 Termination for Non-Appropriation of Funds.

The failure of the Entity to appropriate sufficient funds in any fiscal year during the term of this Agreement to provide funds for this Agreement shall entitle the Entity to terminate this Agreement with 60 days' prior written notice to the Contractor which shall state the date of termination. The Contractor shall be paid for all reasonable costs incurred by the Contractor up to the date of termination. Payment shall be made in accordance with the provisions of Article 2 of this Agreement.

5.4 Early Termination Damages.

5.4.1 In the event this Agreement is terminated for any reason or if the Contractor is given notice of non-renewal, then the Contractor shall have the right to terminate and liquidate all of the Participating Entity's outstanding purchases of natural gas under this Agreement (each a "Terminated Transaction"), if any. As of the date of termination, the Contractor shall determine, in good faith and in a commercially reasonable manner, (i) the amount owned (whether or not then due) by each party with respect to all gas delivered and received between the parties for which payment has not yet been made by the party that owes such payment and (ii) the Market Value, as defined below, of each Terminated Transaction. The Contractor shall liquidate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value,

as defined below, of each Terminated Transaction shall be due to the Participating Entity if such Market Value exceeds the Contract Value and to the Contractor if the opposite is the case.

5.4.2 For purposes of this paragraph, "Contract Value" means the amount of gas remaining to be delivered or purchased under a Terminated Transaction multiplied by the Contract Price, and "Market Value" means the amount of gas remaining to be delivered or purchased under a Terminated Transaction multiplied by the market price for a similar transaction at the delivery point determined by the Contractor in a commercially reasonable manner. To ascertain Market Value, the Contractor may consider, among other valuations, any or all of the settlement prices of NYMEX gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. "Contract Price" means the price for gas agreed to by the parties in each Terminated Transaction.

6. **Insurance.**

The Contractor shall be required to procure and maintain the insurance required by the Entity pursuant to the attached insurance requirements in Attachment C, attached hereto and incorporated herein, in the form and in amounts acceptable to the Entity throughout the term of this Agreement. The Contractor shall provide evidence of the required insurance coverages to the Entity while this Agreement is in force in a form satisfactory to the Entity. Such documentation may, in the discretion of the Entity, be in the form of binders, or declarations, or policies from the insurance company. In the event of a conflict between the provisions of the attached insurance requirements and this Agreement, the provisions of this Agreement shall prevail.

7. **Default.** The term "Default" as used in this Agreement shall mean the occurrence or happening, from time to time, of any one or more of the following:

7.1 **Representations and Warranties.** If any representation or warranty, expressed or implied, contained in this Agreement, and if applicable, the Bid shall prove at any time to be incorrect or misleading in any material respect either on the date when made or on the date when reaffirmed or at any time throughout the term of this Agreement.

7.2 **Compliance with Covenants and Conditions.** If the Contractor shall fail to comply with the terms of any covenant, condition, agreement or any express or implied warranty related to this Agreement.

7.3 **Performance of Contractual Obligations.** If the services performed and the goods provided hereunder are not performed and provided in good faith and in accordance with the provisions of this Agreement.

7.4 **Conditions Precedent to Any Disbursement.** If the Contractor shall be unable to satisfy any condition precedent to its right to receive a disbursement.

7.5 **Bankruptcy.** If the Contractor becomes insolvent or generally does not pay its debts as they become due, or if a petition for relief is filed by the Contractor in a bankruptcy court, or if

the Contractor applies for, consents to, or acquiesces in the appointment of a trustee, custodian, or receiver for the Contractor or any of its assets and property, or makes a general assignment for the benefit of creditors; or in the absence of such application, consent, or acquiescence, a trustee, custodian, or receiver is appointed for the Contractor or for a substantial part of the assets and property of the Contractor and is not discharged within thirty (30) days; or any bankruptcy, reorganization, debt arrangement, or other proceeding or case under any bankruptcy or insolvency or any dissolution or liquidation proceeding is instituted against the Contractor and is consented to or acquiesced in by the Contractor or remains for sixty (60) days un-dismissed; or the Contractor takes any of the actions described in this subsection.

7.6 Entity's Performance of Contractual Obligations. If the Entity fails to pay to Contractor any amount due hereunder on or before the tenth (10th) business day following written notice that such payment is past due.

8. **Remedies for Default.**

8.1 The Entity shall have the right upon the happening of any Default, without providing notice to the Contractor:

8.1.1 In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part;

8.1.2 To suspend the Contractor's authority to receive any undisbursed funds; and/or

8.1.3 To proceed at any time or from time to time to protect and enforce all rights and remedies available to the Entity, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations.

9. **Remedies Cumulative and Concurrent.**

No remedy herein conferred upon or reserved to the Entity is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under this Agreement, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the Entity shall be concurrent and may be pursued separately, successively or together against the Contractor, and every right, power and remedy given to the Entity may be exercised from time to time as often as may be deemed expedient by the Entity.

10. **Confidential Information.**

The Contractor shall not disclose any documentation and information of any kind or nature disclosed to the Contractor in the course of its performance of duties hereunder without the express prior written consent of the Entity.

11. **Conflict of Interest.**

The Contractor represents and warrants that there is no actual or potential conflict of interest between its performance under this Agreement and its engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any renewal hereof, the Contractor shall immediately advise the Entity in writing thereof.

12. **Assignment.**

12.1 Neither the Entity nor the Contractor shall assign, sublet or transfer its interest or obligations under this Agreement to any third party, without the prior written consent of the other provided, however, Contractor may transfer, sell, pledge, encumber or assign the accounts, revenues or proceeds associated with this Agreement in connection with any financing or other financial arrangements. The Contractor further agrees to provide a minimum of ninety (90) days' written notice to the Entity prior to entering into any merger or consolidation where the surviving entity will be unwilling or unable to accept the Contractor's obligations hereunder, to enable the Entity to procure the goods and/or services elsewhere. In the event the cost of procuring such alternate goods and/or services increases the cost to the Entity, and/or delays delivery time of any product, in addition to any other remedies available to the Entity, the Contractor shall pay to the Entity, as damages, any and all additional costs and/or damages incurred.

12.2 Nothing in this Agreement shall be construed to create any personal or individual liability upon any employee, officer or official of the Entity, nor shall this Agreement be construed to create any rights or obligations for any person or entity other than the Contractor and the Entity.

13. **Delegation of Duties.**

The Contractor shall not delegate the Contractor's duties under this Agreement without the prior written consent of the Entity.

14. **Indemnification.**

14.1 The Contractor shall defend, indemnify and hold harmless the Entity, its employees, agents and officials from any and all liabilities, claims, suits, or demands including but not limited to attorneys' fees which may be made against the Entity, its employees, agents or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Agreement by the Contractor or anyone under agreement with the Contractor to perform duties under this Agreement. The Contractor shall not be responsible for acts of gross negligence or willful misconduct committed by the Entity or its employees, agents or officials.

14.2 The Contractor shall also defend, indemnify and hold harmless the Entity, its employees, agents and officials from any and all liabilities, claims, suits, or demands including but not limited to attorneys' fees which may be made against the Entity, its employees, agents or officials by any third party arising from the alleged violation of any third party's trade secrets, proprietary information, trademark, copyright, patent rights, or intellectual property rights in connection with this Agreement.

14.3 Unless notified by the Entity in writing to the contrary the Contractor shall provide defense for Entity, its employees, agents and officials in accordance with this Article 14 and in doing so Contractor shall allow Entity to participate in said defense of Entity, its employees, agents and officials, to the extent and as may be required by the Entity and the Contractor shall cooperate with Entity in all aspects in connection therewith.

15. **Integration and Modification.**

This Agreement sets forth the entire agreement between the Contractor and the Entity relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon the Contractor and the Entity. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of the Contractor and the Entity.

16. **Fee Prohibition.**

The Contractor warrants and represents that it has not employed or engaged any person or entity to solicit or secure this Agreement, and that it has not paid, or agreed to pay any person or entity a fee or any other consideration contingent on the making of this Agreement. If any suit, claim, or demand shall arise concerning such a fee, the Contractor agrees to indemnify and hold harmless the Entity, its employees, agents, and officials from all such claims, suits or demands.

17. **No Partnership.**

Nothing contained in this Agreement shall be construed in any manner to create any relationship between the Contractor and the Entity other than expressly specified herein and the Contractor and the Entity shall not be considered partners or co-venturers for any purpose on account of this Agreement.

18. **Governing Law.**

18.1 This Agreement shall be governed and construed in accordance with the laws of the State of Maryland and Baltimore County.

18.2 **Waiver of Jury Trial.** THE CONTRACTOR AND THE COUNTY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE COUNTY AND/OR THE CONTRACTOR ARE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE COUNTY AND THE CONTRACTOR AND THE COUNTY AND THE CONTRACTOR HEREBY REPRESENT AND WARRANT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY AN INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE COUNTY AND THE CONTRACTOR FURTHER REPRESENT AND WARRANT THAT THEY HAVE BEEN REPRESENTED OR HAD THE OPPORTUNITY TO BE PRESENTED, IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER, BY LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

19. **Recitals and Conflicting Terms.**

19.1 The Recitals are hereby incorporated into this Agreement. The Contractor acknowledges that any purchase order or other ordering document issued on or after the effective date of this Agreement is also hereby integrated and made a part of this Agreement, provided, however that any preprinted terms and conditions of any purchase order or other ordering document issued by the Entity in connection with this Agreement that are in addition to or inconsistent with the terms and conditions of the Agreement, shall not be binding on the Contractor and shall not be deemed to modify this Agreement.

19.2 In the event of a conflict between the Bid and this Agreement, the provisions of this Agreement (without the conflicting terms in the Bid) shall prevail.

19.3 If a conflict arises between the provisions of this Agreement and any purchase order or other ordering document, the provisions of this Agreement shall prevail.

20. **Severability.**

If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

21. **Time is of the Essence.**

TIME IS OF THE ESSENCE WITH RESPECT TO PERFORMANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

22. **Counterparts.**

This Agreement may be executed in any number of counterparts by the Contractor and the Entity hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

23. **Ownership of Goods.**

All finished or unfinished work, reports, or goods that are the subject of this Agreement including but not limited to any licenses or consents acquired by the Contractor for performance hereunder, shall be and shall remain the property of the Contractor.

24. **Discrimination Prohibited.**

24.1 In the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this Agreement, the Contractor shall not:

24.1.1 Fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test;

24.1.2 Limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test; or

24.1.3 Request or require genetic tests or genetic information as a condition for hiring or determining benefits.

24.2 All solicitations or advertisements for employees shall state that the Contractor is an equal opportunity employer.

25. Reports / Information / Inspections / and Audits.

25.1 At any time during normal business hours and as often as the Entity may deem necessary, the Contractor shall make available to and permit inspection and photocopying by the Entity, its employees or agents, all records, information and documentation of the Contractor related to the subject matter of this Agreement, including, but not limited to, all contracts, invoices, payroll, and financial audits.

25.2 The Entity may request the Contractor, at the expense of the Contractor, to have performed an independent audit of the Contractor's financial information including, but not limited to, balance sheets, statement of revenue and expenses, and receipts and disbursements. The independent auditor selected shall be subject to the approval of the Entity.

25.3 The Contractor shall provide monthly comprehensive reports of its activities and the status of its objectives to the person designated by the Entity to receive such reports. The Contractor shall maintain, in a neat and orderly manner, all documents and records relating to work performed pursuant to this Agreement and shall, upon the request of the Entity, provide a copy to the Entity of all information, data, documents, records, reports, drawings and the like, prepared in the course of work under this Agreement.

26. Cooperative Purchase.

26.1 The Contractor acknowledges that the RFP permits the Entity to extend all of the terms, conditions, specifications, and unit or other prices of any contract resulting therefrom to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities including non-public schools. The addition of any new participating entities is conditioned upon the mutual agreement and prior approval of the Participating Entities and the Contractor, and any special tax or administrative requirements created by the new entity necessitating changes to the Unit Pricing may be appended to an Agreement with the new participating entity. The Contractor agrees to notify the Participating Entities, including the Entity, of those entities that wish to use any contract resulting from the Bid.

26.2 The Entity assumes no authority, liability or obligation, on behalf of any other public or non-public entity that may use any contract resulting from the Bid. All purchases and payment transactions will be made directly between the Contractor and the requesting entity.

27. **Notice.**

Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier with receipt, or hand delivered with signed receipt to the following address or individual or at such other address and/or such other individual a party may identify in writing to the other party:

FOR THE ENTITY:

Keith Dorsey, Director Office of Budget and Finance
400 Washington Avenue, Mezzanine Level, Towson, MD 21204
Phone No. 410-887-3313
Fax No. 410-887-3097

FOR THE CONTRACTOR:

Constellation New Energy – Gas Division, LLC
9960 Corporate Campus Drive, Suite 2000
Louisville, KY 40223
Phone No. (502) 426-4500
Fax No. (502) 214-6381

28. **Political Contribution Disclosure Affirmation.**

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, as amended which requires that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, of at least \$100,000.00, shall file with the State Board of Elections certain specified information including but not limited to the disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

29. **No Waiver, Etc.**

No failure or delay by the Entity to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the Entity from exercising any such right, power, or remedy at any later time or times.

30. **Survival.**

Those sections of this Agreement which by their nature are intended to survive, including but not limited to, Articles 4 (Contractor's Representations and Warranties), 10 (Confidential Information),

14 (Indemnification), and 22 (Ownership of Goods), shall survive the expiration or earlier termination of this Agreement.

31. Change In Tariffs Or Regulations. This Agreement is subject to (1) all applicable federal, state and local laws, (2) all applicable state and federal rules and regulations, (3) state regulatory commission-approved tariffs of Entity's LDC, and (4) Federal Energy Regulatory Commission-approved tariffs of transporting pipelines, as such tariffs may be amended or superseded from time to time. If changes in any law, regulation or utility tariff render this Agreement uneconomic for Contractor because of the imposition of additional charges to Contractor, then Contractor shall have the right to offer, and Entity shall have the option of accepting, a surcharge that covers the actual and direct increased costs as evidenced by documentation created in accordance with generally accepted accounting principles; otherwise, Contractor shall have the right to terminate this Agreement upon 30 days' written notice to Entity.

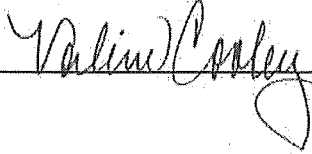
32. Force Majeure. Except for payments that are due, a force majeure event shall, upon notice, excuse the party claiming force majeure from performance during the event. In the event of force majeure, the party claiming force majeure shall use due diligence to restore its ability to meet its obligations under this Agreement. Force majeure means those events not reasonably foreseeable on the date they occur and not within the reasonable control of the party claiming force majeure including but not limited to acts of God; changes in governmental regulations; force majeure events of Entity's LDC; any required or lawful action of Entity's LDC that curtail or interrupt natural gas service, curtailment, disruption or interruption of supply by a supplier or distribution or transportation by a transporter, fire, explosion, facility failure, strike, civil disturbance, sabotage, action or restraint by court order to public or governmental authority; or other government appropriation or curtailment of natural gas.

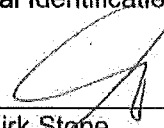
[Signatures on the following page]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

WITNESS:

CONSTELLATION NEWENERGY – GAS DIVISION, LLC
Federal Identification No. 23-2990190



By:  _____ (SEAL)
Kirk Stone
Principal – Commercial Business Enhancement

[Signatures continued on next page]

F-3

WITNESS:

BALTIMORE COUNTY, MARYLAND, a body corporate and politic

[Signature]

By: [Signature] Date
Fred Homan
Administrative Officer

APPROVED FOR FORM AND LEGAL SUFFICIENCY*
(Subject to Execution by A Duly Authorized County Administrative Official and County Council, if Indicated)

MASTER AGREEMENT ONLY
ENCUMBRANCES ARE BY DELIVERY ORDER

[Signature] 12/21/16
OFFICE OF THE COUNTY ATTORNEY 2005 5/30/14

[Signature] 12/21/16
Office of Budget and Finance Date 88

*Approval of Form and Legal Sufficiency Does Not Convey.
Approval or Disapproval of Substantive Nature of Transaction.
Approval is Based Upon Typeset Document. All Modifications Require Re-Approval.

REVIEWED AND APPROVED:

[Signature]
Keith Dorsey, Director
Office of Budget and Finance

BALTIMORE COUNTY COUNCIL

By: [Signature] 1/17/2017
Chairman Date

ATTACHMENT A

SERVICES TO BE PERFORMED/GOODS TO BE PROVIDED

1. Project Details – The supplier shall provide the following services to the Entity: The Contractor shall execute the BRCPC (Baltimore Regional Cooperative Purchasing Committee) natural gas procurement strategy that has been designed to enable BRCPC to efficiently and cost effectively access the natural gas markets and minimize transaction costs. The Contractor shall provide the following services:
 - 1.1 Firm delivery of natural gas supply and firm transportation of such natural gas to all of BRCPC facilities that are served through the BGE and WGL accounts provided.
 - 1.2 Enroll/unenroll accounts as required by each participating jurisdiction.
 - 1.3 Create and manage a dedicated BRCPC DRS account pool and BRCPC Daily Metered pool behind the local gas utility BGE and utilize both pools to meet BGE storage and balancing requirements and minimize costs. Manage nominations, BGE storage and balancing requirements in coordination with BRCPC's energy consultant.
 - 1.4 Basis: Provide fixed rate pricing offers by month for terms up to three (3) years for designated quantities anytime during the contract term.
 - 1.5 Commodity purchases: Ability to enter into forward fixed price commitments for periods up to three (3) years beyond the current fiscal year anytime during the contract term based on NYMEX prices.
 - 1.6 Purchases for Unhedged Monthly Delivery Requirements:
 - 1.6.1 Each month supplier to contact BRCPC's Energy Consultant to obtain instructions on what portion of the unhedged delivery requirement will be purchased based on the NYMEX monthly settlement price and what portion will be purchased on the daily spot market (Gas Daily) for the following month's gas delivery.
 - 1.7 Unbundled Pricing: the Contractor will breakout the following monthly costs (for the portfolio as a whole – not for each account) which will determine the monthly portfolio supply rate for each account:
 - 1.7.1 DRS portfolio (refer to Exhibit A of the RFP for example of supply rate calculation):
 - 1.7.1.1 Fixed rate basis cost – contract quantities
 - 1.7.1.2 First of month basis cost
 - 1.7.1.3 Weighted average (wacog) commodity cost of fixed rate NYMEX contracts – contract quantities
 - 1.7.1.4 NYMEX monthly settlement cost for unhedged commodity purchased based on NYMEX monthly settlement price.
 - 1.7.1.5 Monthly cash settlement price (Gas Daily) – covering purchase and/or sale quantities representing the difference between the monthly nomination quantity and the monthly delivered quantity.

- 1.7.1.6 Monthly BGE storage and balancing fees
- 1.7.1.7 Monthly cost of carry on storage balances
- 1.7.1.8 Supplier service fee
- 1.7.2 Daily metered portfolio:
 - 1.7.2.1 Fixed rate basis cost – contract quantities
 - 1.7.2.2 First of month basis cost
 - 1.7.2.3 Weighted average (wacog) commodity cost of fixed rate NYMEX contracts – contract quantities
 - 1.7.1.4 NYMEX monthly settlement cost for unhedged commodity purchased based on NYMEX monthly settlement price.
 - 1.7.2.5 Monthly cash settlement price – covering purchase and/or sale quantities representing the difference between monthly nomination quantity and the monthly delivered quantity.
 - 1.7.2.6 Supplier service fee
- 1.7.3 Billing:
 - 1.7.3.1 Separate monthly billing for each jurisdiction for all DRS and Daily Metered Accounts.
 - 1.7.3.2 Submit billing in electronic form to each jurisdiction
 - 1.7.3.3 Monthly billing for Daily Metered accounts to include service period delivered quantities, unit price and extension. For DRS accounts to include utility metered consumption for the service period, unit price and extension.
- 1.8 BRCPC is not engaging in purchases of any futures contract whatsoever, or any financial mechanism to hedge any price that is independent of the physical gas delivered to BRCPC via this RFP. There is no interest in any such financial futures contracts, be they NYMEX or otherwise, that is created by this RFP. The NYMEX reference is simply the objective, pricing mechanism used in a formula to define the price of gas for what is physically delivered to BRCPC.
- 1.9 BRCPC is not requesting a securities account or any variation of such via this RFP. BRCPC is requesting a pricing mechanism for physically delivered gas to BRCPC only. What the Contractor does behind the scenes in their account is totally up to them, and need not match what BRCPC has committed to per this RFP. BRCPC has no contractual ability to cause the Contractor under this RFP (contract) to engage in any type of financial or physical contract – that is totally a Contractor's choice.
- 1.10 Transfer/Delivery/Assumption of Fixed Rate Commitments
 - 1.10.1 If open fixed rate commitments remain with the contractor upon expiration/termination of the contract, the contractor agrees to work with BRCPC and the successor contractor to accommodate the transfer of those open

commitments from the contractor to the successor contractor. If such transfer cannot be accommodated, the open fixed rate commitments will be liquidated by the contractor and BRCPC will be responsible for any gains and losses upon liquidation of those commitments. Regardless of whether the commitments are able to be transferred from the contractor to the successor contractor, BRCPC remains responsible for all fixed commitments.

2. CONTRACTOR SERVICE FEE PRICING.

- 2.1 The Contractor service fee shall be quoted on a per deka therm basis on quantities delivered to the local utility (BGE or WGL). The natural gas supply services contract will be a cost plus arrangement; therefore the Contractor's service fee should reflect **solely** the Contractor's charge to service the portfolio. The price should exclude all transportation, BGE balance and storage fees, and risk premiums associated with volumetric and pricing risk as that will be assumed by the portfolio and not the Contractor
- 2.2 The Contractor may offer prompt payment discount. Refer to contract pricing sheet.

3. MASTER NATURAL GAS SUPPLY AND PURCHASE CONTRACT.

3.1 Key provisions of the Contract will include:

3.1.1 Fixed fee per Dth for base service that reflects low supplier risk.

3.1.2 Ability to enter into forward fixed price commitments for monthly quantities for periods up to three (3) years beyond the current budget year at market-based prices.

3.1.3 Pricing Components:

3.1.3.1 Basis for contract quantities

3.1.3.2 Commodity hedge contracts

3.1.3.3 NYMEX settlement and/or gas daily pricing for difference between nomination and delivered quantities

3.1.3.4 BGE storage and balancing costs (for DRS accounts only)

3.1.3.5 Monthly cost of carry on natural gas storage balances (for DRS accounts only)

3.1.3.6 Supplier Service Fee

3.1.4 Basis Contracts (Fixed Price Transactions):

3.1.4.1 BRCPC reserves the right to direct supplier to transact with any counterparty with which supplier has an established trading relationship for the benefit of their account.

3.1.5 Commodity Hedge Contracts (Fixed Price Transactions):

3.1.5.1 Contractor to provide market based fixed price transactions of natural gas commodity at BRCPC request based on current NYMEX prices.

3.1.5.2 Contractor must maintain sufficient credit or collateral to secure fixed price transactions pursuant to industry standards.

THE ABOVE IN ADDITION TO OBLIGATIONS AND DUTIES AS SET FORTH IN THE REQUEST FOR PROPOSAL NO P-165 AND THE BID.

THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS IS NOT A REQUIREMENTS CONTRACT AND THE ENTITY SHALL PROCURE FROM THE CONTRACTOR AS DEEMED APPROPRIATE IN THE ENTITIES SOLE DISCRETION.

ATTACHMENT B
CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the Principal – Commercial Business Enhancement and the duly authorized representative of Constellation NewEnergy – Gas Division, LLC. (the "Business") and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.


B. BID/PROPOSAL AFFIDAVIT AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Procurement Affidavit dated September 30, 2016, and executed by me (Kirk Stone) for the purpose of obtaining the contract to which this Affidavit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: 12-5-16

By: 
Name: Kirk Stone
Title: Principal – Commercial Business
Enhancement
(Authorized Representative and Affiant)

ATTACHMENT C

[INSURANCE INFORMATION]

BALTIMORE COUNTY, MARYLAND
REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES TERM CONTRACT
Due Date: 10/7/16, Time: 2:15 P.M.

PROPOSAL SIGNATURE COVER PAGE
PROPOSAL I, II

SUBMISSION OF A BID/PROPOSAL IN RESPONSE TO THIS SOLICITATION EVIDENCES THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS THEREIN. THIS PAGE MUST BE PROPERLY SIGNED BY AN AUTHORIZED OFFICIAL IN THE FIRM WHO REPRESENTS AND WARRANTS ACCEPTANCE OF ALL TERMS AND CONDITIONS OF THE REQUEST FOR BID/ REQUEST FOR PROPOSAL. THE PERSON SIGNING THE BID/PROPOSAL MUST INITIAL ANY ALTERATIONS IN FIGURES ON THIS FORM IN INK.

COMPANY NAME: Constellation NewEnergy - Gas Division, LLC

ADDRESS: 9960 Corporate Campus Dr , STE 2000

Louisville

KY

40223

(City)

(State)

(Zip Code)

TELEPHONE: 810-385-2699 FAX: _____

SIGNED:  DATE: 9/22/2016

PRINT NAME: Kirk Stone TITLE: Principal Commercial Business Enhancement

TAX ID NUMBER (FIN/SS#) _____ EMAIL: Anne.Daso@constellation.com

Is your company a certified Minority Business Enterprise? Bidders must complete the applicable Minority Participation Affidavit attached.

Initial to confirm that a complete electronic version of the bid proposal response is included in the bid package. _____

Is your firm in compliance with all applicable laws and regulations relating to the employment of illegal aliens? If YES, check here x

NOTICE: A notice required to be delivered shall be deemed to have been received when such notice has been sent to the following address and individual:

Not Applicable

F.O.B. Destination (unless otherwise stated herein).

Delivery shall be made within N/A calendar days after receipt of order.

Payment Terms: Net 30 Cash discounts for less than 30 days will not be considered in determining awards. However, should that bidder obtain award by consideration of the gross price, the County should make every effort to obtain the discount. The County will not accept payment terms with a period of less than (30) days.

If your firm is not already receiving email notification of new solicitations and amendments, you may register for email notification on the County's web site at <http://www.baltimorecountymd.gov/purchasing>.

BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES TERM CONTRACT
 Due Date: 10/7/16, Time: 2:15 P.M.
PROPOSAL I

PRICE SHEET PAGE 1 OF 1		REQUEST FOR PROPOSAL	
LINE NO.	COMMODITY/SERVICE DESCRIPTION	UNIT OF MEASURE	UNIT PRICE
1	Service Fee Service Fee, Supply Services, Implementation Of BRCPC Natural Gas Procurement Strategy, priced per Deka Therm, As Per Specifications.	Deka therm	\$ 0.05 / DTH
2	Carrying Charge: Carrying Charge on Storage Gas for DRS Published Index (state referenced index such as "1 Month Libor" or "3 Month Libor" or "Fixed"): Adder to index (if any) – state as an annual percentage rate (for instance if 1 Month Libor = 1.0% and adder is 1.50%, then annual rate = 2.5%, insert 1.50% as the adder to index line to the right. If fixed rate insert the annual % rate. *CNEC CURRENTLY BUILDS STORAGE CARRYING COSTS INTO THE MONTHLY PRICE AND BREAKS THIS OUT AS A LINE ITEM ON THE PORTFOLIO SPREADSHEET, SEE ATTACHED EXAMPLE)	%	*SEE EXAMPLE 0 %

GRAND TOTAL \$ 0.05 / DTH

COMPANY NAME: CONSTELLATION NEW ENERGY - GAS DIVISION, LLC.

FED ID OR SOCIAL SECURITY NO. 23-2990190

A	B	DU	UE	DF	UG
		May-16	June-16	July-16	August-16
Billing Breakdown - BRCPD					
All Units in Dths and \$/Dths					
IV. Supplier Fee					
	Actual quantities delivered + Storage	206,785	163,476	181,368	179,576
	Supplier fee	\$0.065	\$0.065	\$0.065	\$0.065
	Supplier fee cost	\$13,441.03	\$10,625.94	\$11,788.92	\$11,672.44
V. BGE Balancing Charges					
	Total Balancing Charges:	\$25,917.04	\$27,516.11	\$32,093.33	\$26,898.99
	Bank (Purchase from/Sale to BGE)	-1013	-791	730	-1709
	Price/dth	\$2.2658	\$2.1692	\$2.3297	\$2.1756
	Total	-\$2,295.26	-\$1,715.84	\$1,700.68	-\$3,718.10
	VI. Carrying Costs	\$1,199.94	\$2,023.83	\$2,948.62	\$3,777.63

In the billing sheet, the carrying costs are calculated as (End of Month Storage Balance * Cost in Storage price/therm* .05/12)

BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-165
MONTGOMERY COUNTY BOARD OF EDUCATION (MCBE)
NATURAL GAS SUPPLY SERVICES TERM CONTRACT
 Due Date: 10/7/16, Time: 2:15 P.M.
PROPOSAL II

PRICE SHEET PAGE 1 OF 1			
LINE NO.	COMMODITY/SERVICE DESCRIPTION	UNIT OF MEASURE	UNIT PRICE
1	Service Fee: Service Fee, Supply Services, For providing the natural gas supply services as provided in the contract work scope, priced per Deka therm on delivered quantities, as per specifications.	Deka therm	\$ <u>0.05</u> / DTH



**Baltimore Regional Cooperative Purchasing
Committee**

**REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES TERM CONTRACT**

Due Date: 10/07/16, Time: 2:15 PM

Pre-Bid Conference: 08/23/16, Time: 9:00 AM

Direct all questions to the lead agency:

Kathy Madary, C.P.M., Staff Buyer

Phone: 410-887-3888

Email: kmadary@baltimorecountymd.gov

BALTIMORE COUNTY, MARYLAND

Office of Budget and Finance

Purchasing Division

400 Washington Avenue, Room 148

Towson, Maryland 21204-4665

AMENDMENT NO. 01

DATED 08/17/16

**PLEASE SIGN BELOW ACKNOWLEDGING RECEIPT
OF THIS ADDENDUM AND RETURN WITH YOUR BID.**

Confidential NewEnergy -

Gas Division, LLC

Company Name

Signature



**Baltimore Regional Cooperative Purchasing
Committee**

**REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES TERM CONTRACT**

Due Date: 10/07/16, Time: 2:15 PM

Pre-Bid Conference: 08/23/16, Time: 9:00 AM

Direct all questions to the lead agency:

Kathy Madary, C.P.M., Staff Buyer

Phone: 410-887-3888

Email: kmadary@baltimorecountymd.gov

BALTIMORE COUNTY, MARYLAND

Office of Budget and Finance

Purchasing Division

400 Washington Avenue, Room 148

Towson, Maryland 21204-4665

AMENDMENT NO. 01

DATED 08/17/16

**PLEASE SIGN BELOW ACKNOWLEDGING RECEIPT
OF THIS ADDENDUM AND RETURN WITH YOUR BID.**

Confidential New Jersey -

Gas Services, LLC

Company Name

Signature



**Baltimore Regional Cooperative Purchasing
Committee**

**REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES TERM CONTRACT**

Due Date: 10/07/16, Time: 2:15 PM

Pre-Bid Conference: 08/23/16, Time: 9:00 AM

Direct all questions to the lead agency:

Kathy Madary, C.P.M., Staff Buyer

Phone: 410-887-3888

Email: kmadary@baltimorecountymd.gov

BALTIMORE COUNTY, MARYLAND

Office of Budget and Finance

Purchasing Division

400 Washington Avenue, Room 148

Towson, Maryland 21204-4665

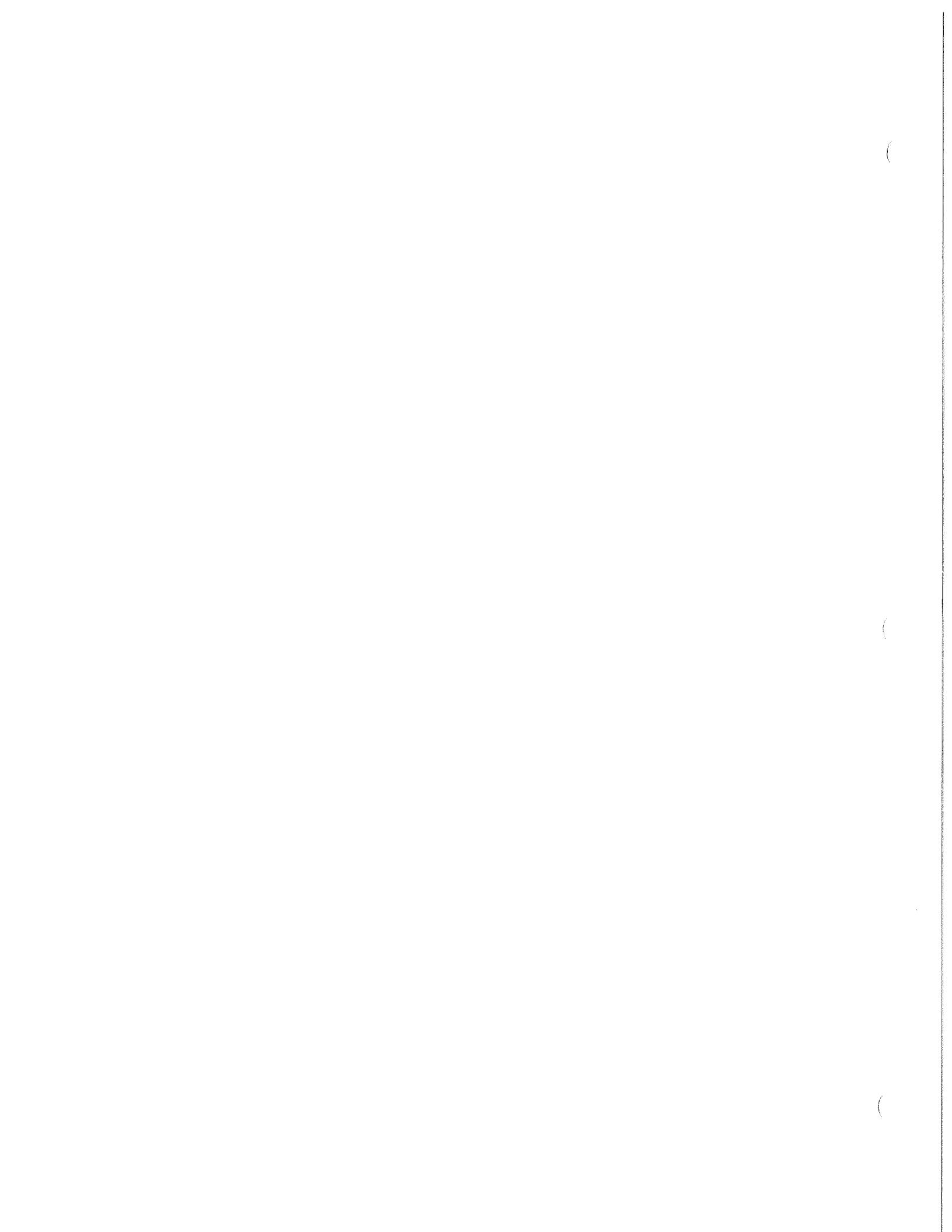
**AMENDMENT NO. 3
DATED 09/26/16**

**PLEASE SIGN BELOW ACKNOWLEDGING RECEIPT
OF THIS ADDENDUM AND RETURN WITH YOUR BID.**

*CONFIDENTIAL MEMORANDUM -
GAS DIVISION, LLC*

Company Name

Signature



Posted
8/16/16



Baltimore Regional Cooperative Purchasing Committee

REQUEST FOR PROPOSAL NO. P-165 NATURAL GAS SUPPLY SERVICES TERM CONTRACT

Due Date: 10/7/16, Time: 2:15 PM
Pre-Bid Conference: 8/23/16, Time: 1:00 PM

Direct all questions to the lead agency:

Kathy Madary, Staff Buyer
Phone: (410) 887-3888
Email: kmadary@baltimorecountymd.gov
BALTIMORE COUNTY, MARYLAND
Office of Budget and Finance
Purchasing Division
400 Washington Avenue, Room 148
Towson, Maryland 21204-4665

Amendments to solicitations often occur prior to bid opening and sometimes within as little as 48 hours prior to bid opening. It is the potential vendor's responsibility to frequently visit the Purchasing web site to obtain amendments once they have downloaded a solicitation.

All original and duplicate bids and other attachments, related documents and correspondence, shall be typed or written in English. All prices/percentages and/or other monetary figures shall be in United States dollars.

BIDDER CHECKLIST

- Have you signed your bid?
- Have you signed the Procurement Affidavit?
- Have you filled out all applicable forms?
- Have you returned the original? (and required duplicate copies when required?)
- Have you signed and returned amendments?
- Have you included the bid bond, if required?

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES TERM CONTRACT**

TABLE OF CONTENTS

- I. **General Instructions for Solicitations**
- II. **Additional General Instructions for Solicitations**
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- IV. **Taxpayer Identification Form**
- V. **Insurance Provisions**
Hold Harmless / Indemnification Clause / Property Lost, Damaged or Destroyed Provision
- VI. **“Prime” Contractor Minority Information**
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- VIII. **General Conditions & Specifications**
- IX. **Bid/Proposal Signature Cover Page**
- X. **Price Sheet**
- XI. **Additional Participating Entity**
- XII. **Price Sheet (MCBE)**
- XI. **Sample Contract**

BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE (BRPC)

GENERAL TERMS AND CONDITIONS FOR SOLICITATIONS

1. INSTRUCTIONS, FORMS AND SPECIFICATIONS

- 1.1 All bids are to be submitted on and in accordance with forms required by the lead jurisdiction, which are available at the office of the Purchasing Agent.
- 1.2 All bids must be clearly identified with the solicitation number, title of the solicitation and the due date and time.
- 1.3 Each bid shall be accompanied by an affidavit regarding price fixing, gratuities, bribery, and discriminatory employment practices. If the bidder is a business entity, a duly and legally authorized representative of the business entity shall execute the affidavit. The Purchasing Agent will provide the affidavit to bidders.
- 1.4 Bids must be typed or written and signed in ink, unless the solicitation is bid electronically, in which case an electronic signature is acceptable. Erasures or alterations must be initialed in ink, unless the solicitation is bid electronically, in which case electronic initials are acceptable. A duly and legally authorized representative of the business entity shall sign all bids in ink (or in the case of electronic solicitation, digitally). All bids shall be delivered sealed to the Purchasing Agent, no later than the time and date indicated herein. Bids received after the time or date indicated will not be considered.
- 1.5 Additional information or clarifications of any of the instructions or information contained herein may be obtained from the Purchasing Agent.
- 1.6 Any bidder who finds a discrepancy in or omission from the specifications, or who is in doubt as to their meaning or feels that the specifications are discriminatory, shall notify the Purchasing Agent in writing not less than 10 calendar days before the scheduled opening of bids. Discrepancies or exceptions taken do not obligate the Purchasing Agent to change or supplement the specifications. The Purchasing Agent will notify all bidders in writing, by addendum duly issued, of any interpretations of specifications or instructions that are made.
- 1.7 Unless a written discrepancy, change, supplement, or exception to the specifications is noted on the bid detailing nonconformance, any part number, or product number, etc. noted on the bid will be considered in full compliance with the specifications. Submission of a bid in response to this solicitation evidences the bidder's acceptance of the terms and conditions herein.
- 1.8 All official correspondence in regard to the specifications shall be directed to and/or will be issued in writing by the Purchasing Agent. Oral instructions or suggestions are not binding upon the Purchasing Agent or BRPC.
- 1.9 The Purchasing Agent will notify bidders of any changes, additions or deletions to the specifications by written addenda posted on the lead agency's web site at www.baltimorecountymd.gov/purchasing. Addenda to solicitations are sometimes issued within as little as 48 hours prior to bid opening. It is each potential bidder's sole responsibility to frequently visit the web site to obtain all addenda.

2. BID DEPOSIT

- 2.1 A bid deposit may be required when indicated in the solicitation. Failure to submit the bid deposit with the bid, when required, will nullify the bid.
- 2.2 When required in the solicitation, a certified check, treasurer's check, U.S. Postal Money Order, or a bid bond must accompany each bid.
- 2.3 Bid deposits will be returned to each unsuccessful bidder upon the award of the solicitation, and to successful bidders upon its execution of the contracts with each participation jurisdiction and the meeting of bond requirements, if applicable.
- 2.4 Nonperformance by a successful bidder, failure to execute a contract with each participation jurisdiction, or failure to meet bond requirements within the time frame specified in the solicitation or award notification may result in the bid bond being forfeited as liquidated damages.

3. BASIS FOR AWARD OF CONTRACT

- 3.1 The Purchasing Agent shall award all contracts to the lowest responsible and responsive bidder(s) for competitive sealed bids and based on best value for competitive negotiations as determined in the sole discretion of the Purchasing Agent. Each participating jurisdiction will execute its own contract and issue its own purchase order for their contract. Each participating jurisdiction is responsible for determining that the method of solicitation complies with its procurement laws.
- 3.2 Any other consideration for the award will be stated in the solicitation.
- 3.3 Unless otherwise agreed in writing by the Purchasing Agent and the bidder(s) specified, all bids submitted shall be irrevocable for 120 calendar days following bid opening date, unless the bidder(s), upon request of the Purchasing Agent, agree to an extension. No bidder may withdraw its bid during that period.
- 3.4 When there is a conflict between the unit price or percentage and the extension, the unit price or percentage will prevail as the amount of the bid.
- 3.5 Bids shall be exclusive of all non-applicable Federal and Maryland state taxes. Tax exemption certificates will be furnished if required.
- 3.6 Each participating jurisdiction reserves the right to make payments via electronic funds transfers (EFT) or procurement cards for purchases for which those payment methods may be appropriate.

4. CASH DISCOUNT AND NET PAYMENTS

- 4.1 Cash discounts based on time of payment will not be considered in determining an award, but will be taken by each participating jurisdiction, if applicable, at time of payment.
- 4.2 Bids requiring payment within less than 30 days from the date of invoice will be rejected.

5. PERFORMANCE AND PAYMENT BONDS

- 5.1 The successful bidder may be required to give security or bond for the performance of each participating jurisdiction's contract as determined by the Purchasing Agent.

- 5.2 When bonds are required, a surety licensed to do business in the State of Maryland must issue the bonds for each participating jurisdiction.

6. RESERVATIONS

- 6.1 The Purchasing Agent reserves the right to reject any or all bids, in whole or in part, when in his/her reasoned and sole judgment, the public or BRCCPC's interest will be served thereby.
- 6.2 The Purchasing Agent may waive formalities or technicalities in bids as the interest of the public or BRCCPC and its participating jurisdictions may require, providing these differences do not violate the intent of the specifications, materially affect the operation for which the items are being purchased, or increase the price or estimated maintenance and repair cost.
- 6.3 Unless otherwise provided herein, each participating jurisdiction reserves the right to increase or decrease the quantities to be purchased at the prices bid. The quantity intended to be purchased and the period and/or percentage amount of any such reservation shall be stated in the solicitation and/or in any applicable participating jurisdiction's contract.
- 6.4 Unless otherwise provided herein, the Purchasing Agent reserves the right to make award(s) on a lump sum basis, individual item basis, or such combination as shall be in the best interest of the public and/or BRCCPC.
- 6.5 Unless otherwise provided herein, the Purchasing Agent reserves the right to order goods or services from other sources without prejudice to the contract.

7. DELIVERIES

- 7.1 Bidders shall guarantee delivery in accordance with any delivery schedule as may be provided in the solicitation and/or in each participating jurisdiction's contract.
- 7.2 All deliveries shall be F.O.B. Destination and delivery costs and charges shall be included in the bid price.
- 7.3 Each participating jurisdiction reserves the right to levy a per diem charge to the successful bidder for each day the goods or services are not delivered in accordance with the delivery schedule. The per diem charge, identified in the solicitation and/or in each participating jurisdiction's contract, may be invoked at the discretion of the participating jurisdiction and said sum may be taken as liquidated damages and deducted from any compensation due to the successful bidder. Invoking the per diem charge as liquidated damages is not a waiver of the right to any other remedies or damages.
- 7.4 When practical, the successful bidder must package and ship all products in packaging and containers made of recycled, recyclable or biodegradable materials. Bidders are encouraged to eliminate packaging, or to use the minimum amount necessary for product protection, in order to minimize waste to the greatest extent practicable.

8. COMPETITION

- 8.1 The name of any manufacturer, trade name of manufacturer, or vendor catalog number mentioned in the specifications is for the purpose of designating a standard of quantity and type and for no other reason. Minimum specifications where included, are not established arbitrarily to limit competition or to exclude otherwise competitive bidders.

- 8.2 A bidder shall offer a price on only one unit. Even though two or more units may meet specifications, Bidders must determine which to offer. Submission by a bidder for more than one unit shall be sufficient cause for rejection of that specific item in the Purchasing Agent's sole discretion.
- 8.3 Bids that show any omission, irregularity, alteration of forms, additions not called for, conditional or unconditional unresponsive bids, or bids obviously unbalanced may be rejected in the Purchasing Agent's sole discretion.
- 8.4 All bids must be accompanied by such descriptive literature as may be called for by the solicitation.
- 8.5 If goods to be provided or goods to be used by a successful bidder when providing a service contain any ingredients that could be hazardous or injurious to a person's health, a Material Safety Data Sheet (MSDS) must be provided to the Purchasing Agent. This applies also to any goods used by the Successful Bidder when providing a service to the BRCPC.

9. HOLD HARMLESS/INDEMNIFICATION

The successful bidder shall indemnify, defend, and save harmless each of the participating jurisdictions and their respective employees, agents and officials against or from all costs, fees (including reasonable attorneys' fees), liabilities expenses, damages, injury, and loss including (but not limited to) attorney's fees, which may be incurred or made against any of the participating jurisdictions, their respective employees, agents or officials, and resulting from any act or omission committed in the performance of the duties and obligations of the successful bidder under this solicitation and/or each participating jurisdiction's resulting contract or anyone under contract with the successful bidder to perform duties or obligations thereunder. The successful bidder shall allow each participating jurisdiction to participate in the defense of the participating jurisdiction, its employees, agents and officials, to the extent and as may be required by the participating jurisdiction, and the successful bidder shall cooperate with the applicable participating jurisdiction in all aspects in connection therewith.

10. INSURANCE

- 10.1 The successful bidder shall, at all times during the term of each participating jurisdiction's contract, maintain and keep in force such insurance as Workmen's Compensation, Liability, and Property Damage as will protect the successful bidder from claims under Workmen's Compensation Acts and also such insurance as will protect the successful bidder and the participating jurisdictions from any other claims for damages for person injury, including death, as well as from claims for damages to any property of each participating jurisdiction or of the public, which may arise from operations under this solicitation and each participating jurisdictions' contract, whether such operations are by the successful bidder or any subcontractor or any agent directly or indirectly employed by any of them.
- 10.2 Refer to the specifications for detailed insurance requirements. [Or insert the lead jurisdiction's requirements here]

11 DISPUTES

Prior to award, in case of disputes, the decision of the Purchasing Agent shall be final and binding. The Purchasing Agent may request, in writing, the recommendation of participating jurisdictions or other objective source. Subsequent to award of the solicitation, in case of disputes as to whether an item or service quoted or delivered meets specifications, the decision of the applicable participating jurisdiction shall be final and binding with respect to the participating jurisdiction's contract.

12. TERMINATION

12.1 Termination for Convenience: Any participating jurisdiction may terminate its contract, in whole or in part, upon giving at least thirty (30) days written notice to the successful bidder. The participating jurisdiction shall pay all reasonable costs incurred by the successful bidder up to the date of termination in connection with that participating jurisdiction's contract only. The successful bidder will not be reimbursed for any anticipatory profits, which have not been earned up to the date of termination by any participating jurisdiction or BRCPC. The BRCPC will be promptly notified in writing of any termination hereunder by the applicable participating jurisdiction.

12.2 Termination for Default: When the successful bidder has not performed or has unsatisfactorily performed under the contract of any participating jurisdiction, the participating jurisdiction may terminate its contract for default and the successful bidder is entitled to any reasonable costs incurred by the successful bidder up to the date of termination. The successful bidder will not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. The BRCPC will be promptly notified in writing of this termination by the applicable participating jurisdiction.

13. PATENT INFRINGEMENT

The successful bidder agrees to indemnify, protect, defend and save harmless each participating jurisdiction, its officers, agents, and employees with respect to any claim, action, cost (including, but not limited to, attorney's fees), or judgment for patent, copyright, or trademark infringement, or any other claim related to intellectual property or proprietary information arising out of purchase or use of goods or services or from any of the successful bidder's duties or obligations covered by the solicitation or any participating jurisdiction's contract. The successful bidder shall allow each participating jurisdiction to participate in the defense of the participating jurisdiction, its employees, agents and officials, to the extent and as may be required by the participating jurisdiction, and the successful bidder shall cooperate with the applicable participating jurisdiction in all aspects in connection therewith.

14. NON-ASSIGNMENT

A participating jurisdiction's contract resulting from this solicitation and the compensation, which may become due thereunder, are not assignable except with prior written approval of the applicable participating jurisdiction.

15. FACILITIES

The BRCPC and each participating jurisdiction reserves the right to inspect the bidder's facilities at no cost to the BRCPC or any participating jurisdiction at any time with prior notice.

16. AUTHORITY

Instructions, specifications, and proposals are issued, and all bids, quotations, orders, and purchases are made pursuant and subject to the enabling respective legislation of each of the participating jurisdictions. The successful bidder shall ensure compliance with the ethics provisions of the participating jurisdictions.

17. FAILURE TO RESPOND

Bidders who fail to respond three (3) times in succession to solicitations without adequate justification may be removed from the bidder's list.

18. AVAILABILITY OF FUNDS

BRCPC has no obligation (contractual, financial or otherwise) hereunder or for any participating jurisdiction's contract. The contractual obligation of each participating jurisdiction under its respective contract is contingent upon appropriation of funds by the governing body of the applicable jurisdiction from which payment shall be made.

19. GOVERNING LAW

19.1 This solicitation shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The exclusive venue for any and all actions related to this solicitation hereto shall be the appropriate Federal or State court located within the State of Maryland.

19.2 The laws of Maryland shall govern the resolution of any issue arising in connection with each participating jurisdiction's contract, including, but not limited to, all questions on the validity of each such contract, the capacity of the parties to enter therein, any modification or amendment thereto, and the rights and obligations of the parties thereunder.

19.3 All bidders must be registered to do business in the State of Maryland in accordance with the Annotated Code of Maryland Corporations and Associations Sec. 2-102 Formation generally, Sec. 7-202 Registration to do interstate and foreign* business, and/or Sec. 7-203 Qualification to do intrastate. For information on registering or qualifying a corporation, LLC, LLP or LP call the Maryland Department of Assessments and Taxation (SDAT) at (410) 767-1340. Sole Proprietors and General Partnerships may call (410) 767-4991 or you may download the SDAT forms at: www.dat.state.md.us/sdatweb/sdatforms.html - entity or by calling at (410) 767-1340 or Toll Free (888) 246-5941. The successful bidder will be required to submit a Good Standing Certificate (also known as "Certificate of Status") issued by SDAT.

*"a corporation, association, or joint-stock company organized under the laws of the United States, another state of the United States, a territory, possession, or district of the United States, or a foreign country." Sec. 1-101 Annotated Code of Maryland Corporations and Associations.

20. NON-WAIVER

Any waiver of any breach of covenants herein contained to be kept and performed by the successful bidder shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent any participating jurisdiction from declaring a breach or default for any succeeding breach either of the same condition of covenant or otherwise. No failure or delay by any participating jurisdiction to insist upon the strict performance of any term, condition or covenant of its contract agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the participating jurisdiction from exercising any such right, power, or remedy at any later time or times.

21. INTEGRATION

This solicitation, bid response, and each subsequent participating jurisdiction's contract with the successful bidder contain the entire understanding between the successful bidder and each applicable participating jurisdiction. Each participating jurisdiction's contract shall only be amended if such amendment is in writing and executed by a legally authorized representative of the successful bidder

and the applicable participating jurisdiction. Any contract amendment of one participating jurisdiction shall not impact or affect any other participating jurisdiction's contract or BRCP.

22. SOCIO-ECONOMIC PROGRAMS

The participating jurisdictions have various socio-economic programs, which, if applicable, are detailed in the solicitation. Although there is no requirement that the bidder be a minority-owned, women-owned, disabled-owned business or small business, all underutilized businesses are encouraged to respond to this solicitation.

23. USE OF ILLEGAL IMMIGRANT LABOR

The use of illegal immigrant labor is in violation of the law and is strictly prohibited. Contractors and subcontractors must verify employment eligibility of workers in order to assure that they are not violating Federal/State/Local laws regarding illegal immigration.

24. PUBLIC INFORMATION

The participating jurisdictions operate under a public information law – Maryland Access to Public Records Act, State Government Article, Sections 10-611 through 10-628, of the Annotated Code of Maryland. Bids/proposals will be available for public inspection except to the extent that a bidder designates trade secrets or other proprietary data to be confidential. A bidder's designation of material as confidential will not necessarily be conclusive, and may be required to provide justification as to why such material should not be disclosed upon request.

GENERAL TERMS AND CONDITIONS APPLICABLE TO
STATE OF MARYLAND, BOARDS OF EDUCATION

1. TOBACCO PRODUCTS

The use of tobacco products is not permitted on school property. Referencing Code of Maryland Regulations 13A.02.04, the use of tobacco products is not permitted in or on property owned by the Board of Education or the political subdivisions.

2. CHILD SEX OFFENDER NOTIFICATION

2.1 Maryland law requires certain child sex offenders to register with the local law enforcement agency. One of the purposes of this law, found in Article 27§ 792, is to inform school systems when a child sex offender is residing or working in the area. When the child sex offender registers, the local police are required to notify the Superintendent of Schools, and the Superintendent, in turn, is required to send a notice to school principals.

2.2 As a successful bidder and/or its agents working for the political subdivisions, shall not employ convicted child sex offenders to work on projects for public schools if they, as a result, are required to perform delivery, installation, repair, construction or any other kind of services on political subdivision property. Further, Maryland Law effective June 22, 2006, requires that any person who enters a contract with a county board of education or a non-public school "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. A successful bidder and/or its agents who violate this requirement is guilty of a misdemeanor and if convicted may be subject to up to five years imprisonment and/or a \$5,000 fine.

2.3 A successful bidder shall screen their work-forces to ensure that a registered sex offender does not perform work at a school and also ensure that a subcontractor, independent contractor, successful bidder and/or any agents conducts screening of its personnel who may work at a school. The term "work force" is intended to refer to all of the successful bidder's direct employees, subcontractors, agents, and/or independent contractors it used to perform the work. Violations of this provision may cause a participation jurisdiction to take action against the successful bidder up to and including termination of the contract.

2.4 To assist you in identifying convicted child sex offenders, the schools have the list of convicted child sex offenders, which successful bidders may view. The schools maintain the list and update the list as new offenders are identified, however, it is solely the responsibility of the successful bidder to comply with this provision.

Additional General Instructions for Solicitations

1. Instructions, Forms and Specifications

1.1 All bids/proposals are to be submitted on and in accordance with the forms provided by the Purchasing Division. All bids must be submitted in a sealed envelope or carton as appropriate. All bids must be clearly identified on the front of the envelope or top of the carton with the SOLICITATION NUMBER and the DUE DATE and TIME. Bid times are either Eastern Standard Time or Eastern Daylight Time, whichever prevails. Late bids will not be considered.

1.2 Responses to Requests for Bids and Requests for Proposals shall be accompanied by an executed Procurement Affidavit, as provided by the Purchasing Division. This does not apply to Requests for Quotations.

1.3 Amendments to solicitations often occur prior to bid opening and sometimes within hours prior to bid opening. All bidders are responsible for frequently visiting the Purchasing web site to obtain amendments once they have downloaded a solicitation.

1.4 Additional information or clarification of any of the instructions or information contained herein may be obtained from the Purchasing Division. The County assumes no responsibility for oral instructions or suggestions. All official correspondence in regard to this solicitation must be directed to, and will be issued by, the Purchasing Division.

1.5 Bidders finding any discrepancy in or omission from the specifications, in doubt as to meaning, or asserting that the specifications are discriminatory, shall notify the Purchasing Division in writing at once, but in no case later than five (5) business days prior to the scheduled opening of bids. Exceptions stated do not obligate the County to change the specifications. The Purchasing Division will notify all bidders in writing, by amendment duly issued, of any substantive revisions to specifications or instructions.

1.6 Unless a written exception detailing non-conformance to specifications is noted on the bid, any part number, product number, catalog number, etc., noted on the bid will be considered in full compliance with the specifications.

1.7 Submission of a bid in response to this solicitation evidences the bidder's acceptance of these General Instructions and the terms and conditions of the solicitation. Submission of a bid evidences bidder's representation and warranty that the person submitting the bid response is authorized to act for and bind the contractor.

1.8 All original and duplicate bids/proposals and other attachments, related documents and correspondence, including all follow-up documents and correspondence, shall be typed or written in English. All prices/percentages and/or other monetary figures shall be in United States dollars.

1.9 Requests for Bids and Requests for Proposals should be accompanied by an electronic version (Compact Disc) of the bid proposal in PDF format. It shall be the bidder's responsibility to verify that the electronic version is complete. The electronic version of the non-successful proposal response will be the only version retained by Baltimore County. The Compact Disc must be labeled with the bid number, the bid title, and the bidder's name submitting the response. All bids must be submitted in a sealed envelope or carton as appropriate. This does not apply to Requests for Quotation.

1.10 Issuing Officer: The sole point of contact for the County for purposes of this solicitation is the Buyer, listed on the cover page; questions regarding any aspect of the competitive process must be directed to the Buyer, in writing.

2. Award of Solicitations

2.1 Any award pursuant to Requests for Quotation and Requests for Bid is made to the lowest responsive and responsible bidder following the public opening of bids under Section 10-2-406 of the Baltimore County Code, 2003, as amended.

2.2 Awards on Requests for Quotations and Requests for Bid will be made within sixty (60) days after bid opening unless otherwise indicated in this solicitation. No bidder will be allowed to withdraw a bid during that period.

2.3 The successful bidder may be required to give security or bond, as stated in the bid document, for performance of the contract.

2.4 When there is a conflict between the unit price or percentage and the extension, the unit price or percentage will prevail as the amount of the bid.

2.5 Cash discounts will be considered in determining awards. However, cash discount offers must allow not less than 30 days to be considered in bid evaluation. A bid offering a cash discount in a period of less than 30 days will be evaluated as a bid without a discount offer; however, should that bidder obtain award by consideration of the gross price, the

County shall make every effort to obtain the discount. The County will not accept any payment terms with a period of less than 30 days.

2.6 Invoices against resulting order(s) must be submitted, in duplicate, to the Office of Budget and Finance, Disbursements Section, 400 Washington Avenue, Room 148, Towson, Maryland 21204-4665. Invoices must show the vendor's Federal Tax Identification Number or Social Security Number, as appropriate, and order number and line number(s) that correspond with resulting order(s).

2.7 The County will not pay interest charges or other penalties for invoice payments.

2.8 Prices quoted shall be exclusive of all non-applicable Federal and Maryland State taxes. Tax exemption certificate will be furnished if required.

2.9 The County reserves the right to consider making payments via electronic funds transfers (EFT) on contracts for which this payment vehicle may be appropriate.

3. Reservations

3.1 The County reserves the right to reject, in whole or in part, any and all bids received, and to make a whole award, multiple awards, a partial award, or no award, to best serve the public interest.

3.2 The County may waive formalities in bids as the interests of the County may require.

3.3 The County reserves the right to increase or decrease quantities by approximately twenty (20) percent to be purchased at the prices bid.

3.4 The County reserves the right to award solicitations or place orders on a lump sum or individual item basis, or in such combination as to best serve the public interest.

3.5 The County may waive minor differences, irregularities, and technicalities in the specifications, provided they neither violate the specifications intent, materially affect the operation for which the items or services are being purchased, nor increase estimated maintenance and repair costs to the County.

3.6 At any time during normal business hours and as often as the County may deem necessary, the Contractor shall make available to and permit inspection and photocopying, by the County, its employees or agents, of all records, information and documentation of the Contractor related to the subject matter of this contract, including, but not limited to, all contracts, invoices, payroll, and financial audits.

3.7 Notwithstanding any other terms or provisions of the contract, in the event the County is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it thereunder, by act of the General Assembly of Maryland or the Baltimore County Council, by a court of competent jurisdiction or by administrative delay not due to the fault of the County (and its members and agents) shall not be liable directly or indirectly for any claims caused to or suffered by the Contractor or any other person in connection with or as a result of such prevention, restriction or delay.

3.8 The County further reserves the right to make such investigation as it deems necessary to determine the ability of bidders to furnish the required services, and bidders shall furnish all such information for this purpose as the County may request. The County also reserves the right to reject the proposal of any bidder who is not currently in a position to perform the contract, or who has previously failed to perform similar contracts properly, or in a manner acceptable to the County, all of which shall be in the County's sole discretion.

4. Competition

4.1 The name of any manufacturer, trade name, or vendor catalog number mentioned in the specifications is for the purpose of designating a standard of quality and type, and for no other purpose unless otherwise stated in the solicitation.

4.2 A bidder may offer a price on only one unit per line item. Even though two or more units may meet the specification, bidders must determine for themselves which to offer. Submission by a bidder of prices for more than one unit shall be sufficient cause for rejection of the bid for that specific item.

4.3 Bids which show omission, irregularity, alteration of forms or additions not called for, as well as conditional or unconditional unresponsive bids, or bids obviously unbalanced, may be rejected.

4.4 All bids must be accompanied by such descriptive literature as may be called for by the specifications or proposal.

4.5 If products to be provided to the County contain any substances that could be hazardous or injurious to a person's health, a material safety data sheet (MSDS) must be provided to the Purchasing Division. This applies also to any product used by a Contractor when providing a service to the County.

4.6 Specifications are based on County needs and uses, estimated costs of operations and maintenance, and other significant and/or limiting factors to meet

County requirements, and to ensure consistency with County policies. Minimum specifications, and maximum specifications where included, are not established arbitrarily to limit competition or to exclude otherwise competitive bidders.

4.7 Unless multiple or alternate bids are requested in the solicitation, these bids may not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder.

5. Minority/Women's Business Enterprise (MBE/WBE) and Small Business Notice: Baltimore County is seeking Minority, Woman and Small Businesses to bid on current solicitations as a prime or sub contractor. In accordance with the Executive Order dated June 4, 2009, "an overall goal of 15% of the cumulative total of all discretionary dollars spent in a fiscal year of County procurements is to be awarded to and/or performed by MBE and WBE firms." MBE/WBE's and Small Businesses are encouraged to respond to this solicitation.

6. Authority

6.1 In case of disputes as to whether an item or service quoted or delivered meets specifications, the decision of the Purchasing Agent or authorized representative shall be final and binding on both parties. The Purchasing Agent may request the recommendation in writing of the head of the using agency, the Standards and Specifications Committee, or other objective sources.

6.2 Bidders desiring to appeal a decision of the Purchasing Division must deliver written protests to the Purchasing Division within 10 days of notification of award. The Purchasing Agent or designee will review the protested decision, examine any additional information provided by the bidder and respond in writing within 10 working days of receipt of written protests.

6.3 Instructions, Specifications, and Proposals are issued, and all bids, quotations, orders, and purchases are made pursuant and subject to the provisions of the Baltimore County Charter, and Article 10, Title 2 of the Baltimore County Code, 2003, as amended, and regulations and policies established or prescribed by the Purchasing Division.

**BALTIMORE COUNTY, MARYLAND
PROCUREMENT AFFIDAVIT**

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] _____ and I am duly authorized to represent and bind [business name] _____ (the "Business") and that I possess the legal authority to make this Affidavit on behalf of myself and the Business for which I am acting.

B. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 6-225 of the Criminal Procedure Article of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows [indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the Business]:

C. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, members, affiliates, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961, et seq., or the Mail Fraud Act, 18 U.S.C. §1341, et seq., for acts arising out of the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsection (1), (2), (3), or (4) above;

(6) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(7) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described above, except as follows [indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition

of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the Business, and the status of any debarment]:

D. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its officers, directors, partners, members, affiliates, or any of its employees directly involved in obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows [list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceeding, the name(s) of the person(s) involved and their current positions and responsibilities with the Business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension]:

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The Business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The Business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows: [you must indicate the reasons why the affirmations cannot be given without qualification]:

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the Business, nor any of its employees, have in any way:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise take any action to impact, restrain, or inhibit free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted;

(3) Colluded with anyone to obtain information concerning the bid that would give the Business an unfair advantage over others.

H. AFFIRMATION REGARDING POLITICAL CONTRIBUTION DISCLOSURE

I FURTHER AFFIRM THAT:

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which require that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, or at least \$100,000.00, shall file with the State Board of Elections certain specified information to include disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

I. CERTIFICATION OF REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business was formed in the State of *(Insert State Name)*: _____

(2) The Business is a *(please select one)*:

- Corporation
- Partnership
- Limited Liability Company
- Limited Liability Partnership
- Sole Proprietor
- Other: _____

(If sole proprietor #3 below does not apply, continue to #4.)

(3) Is this business registered with the Maryland State Department of Assessments and Taxation ("SDAT") in accordance with the Corporations and Associations Article of the Annotated Code of Maryland?

Yes No

a. If yes, is the business in good standing in the State of Maryland, and has it filed all of its annual reports, together with filing fees? Yes No

b. Registered Agent as shown in SDAT:

Name: _____

Address: _____

c. If not, is the business in good standing in the formed in State of origination? Yes No

(4) Except as validly contested, has the -Business -paid, or -arranged for payment of, all taxes due the State of Maryland and Baltimore County, and -filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and -paid all withholding taxes due the State of Maryland prior to final settlement?

Yes No

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The Business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Business, to solicit or secure the Contract, and that the Business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or other consideration contingent on the making of the Contract.

K. AFFIRMATION OF NONDISCRIMINATION IN EMPLOYMENT

I FURTHER AFFIRM THAT:

During the performance of any contract awarded pursuant to the solicitation of which this affidavit is a part:

(1) The Business will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. The Business will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of genetic test. Such action shall include, but not be limited to the following: employment, promotion, upgrading, demotion or transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Business agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth provisions of this nondiscrimination clause.

(2) The Business will, in all solicitations or advertisements for employees placed by or on behalf of the Business, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test.

(3) The Business shall send to each labor union or representative of workers with which the Business has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the owner, advising the said labor union or workers' representative of these commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Business shall furnish, if requested by the County, a compliance report concerning our employment practices and policies in order for the County to ascertain compliance with the special provisions of this affidavit concerning nondiscrimination in employment.

(5) In the event of the Business's noncompliance with the nondiscrimination clause of this affidavit, the contract may be canceled, terminated, or suspended in whole or in part, and the Business may be declared ineligible for further County work.

(6) The Business shall include the special provisions outlined herein pertaining to nondiscrimination in employment in every subcontract, so that such nondiscrimination in employment provisions shall be binding on each subcontractor or vendor.

L. FOREIGN CONTRACTS DISCLOSURES

I FURTHER AFFIRM THAT:

- (1) The Business affirms that it is aware of, and will comply with, the provisions of Sections 10-2-110 Article 10. Finance, Title 2 – Purchasing, Baltimore County Code 2003, as amended, which requires that prior to the award of a contract for services under the provisions of this title, and during the entire term of a contract award, the bidder or vendor shall disclose to the County whether any services covered by the bid or contract, including any subcontracted services, will be performed outside the United States.
- (2) The Business affirms that it is aware of, and will comply with, the provisions of Section 12-111 of the Maryland State Finance Procurement Article, which requires bidders to make certain disclosures relating to subcontractors or services, regarding plans at the time the bid is submitted, to perform any services with an estimated value of \$2 million or more under the contract outside the United States. This provision applies to: (1) construction-related services; (2) architectural services; (3) engineering services; or (4) energy performance contract services. The provision requires bidders to disclose:

- a. Whether the Business or any contractor that the Business will subcontract with to perform the contract has plans, at the time the bid is submitted, to perform any services required under the contract outside the United States; and
 - b. If the services under the contract are anticipated to be performed outside the United States;
 - c. Where the services will be performed; and
 - d. The reasons why it is necessary or advantageous to perform the services outside the United States.
- (3) Indicate below whether or not the Business has information to disclose. **(You must check one of these)**
- The Business has no plans, at the time the bid is submitted, to perform any services under the contract outside the United States.
 - The Business has plans, at the time the bid is submitted, to perform services under the contract outside the United States.
 - i. The services will be performed in the following location: _____
 - ii. It is necessary or advantageous to perform the services outside the United States for the following reason(s): _____

M. AFFIRMATION REGARDING INVESTMENT ACTIVITIES IN IRAN

I FURTHER AFFIRM THAT:

At the time the bid/proposal is submitted, or if the contract is renewed, the Business:

- i. Is not identified on the list created by the Maryland State Board of Public Works as a person, Business or entity engaging in investment activities in Iran as described in Section 17-702 of the Maryland State Finance and Procurement Article ; or
- ii. Is not engaging in investment activities in Iran as described in Section 17-702 of the Maryland State Finance and Procurement Article.

If the Business is unable to make the certification, it will provide the County, under penalty of perjury, a detailed description of the Business' investment activities in Iran.

N. ACKNOWLEDGMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the County and may be distributed to units of (1) Baltimore County; (2) the State of Maryland; (3) other counties or political subdivisions of the State of Maryland; (4) other states; and (5) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of Baltimore County, or the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any right or remedy at Law or in equity with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the Business with respect to (a) this Affidavit, (b) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, AFTER DILIGENT INQUIRY.

Date: _____

By: _____

Name:
 Title:
 (Authorized Representative and Affiant)

**“PRIME” CONTRACTOR
MINORITY INFORMATION**

This form is NOT applicable to Sub-Contractor requirements, and should be completed by the PRIME Contractor ONLY.

A. AUTHORIZED REPRESENTATIVE

I am the [title] _____ of [business]
_____ (the “Business”).

B. DEFINITIONS

I am aware that, pursuant to the June 4, 2009 Executive Order of Baltimore County, Maryland, the following words have the meanings indicated.

(A) “Minority Business Enterprise” or “MBE” means a business enterprise that is owned, operated and controlled by one or more minority group members (African American, Hispanic American, Asian American, or Native American) who have at least 51% ownership and in which the minority group members have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

(B) “Women’s Business Enterprise” or “WBE” means a business enterprise that is owned, operated and controlled by one or more women who have at least 51% ownership and in which the women have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

C. INFORMATION REGARDING MINORITY STATUS

The Business is a certified MBE ___ or WBE ___

Maryland State Department of Transportation (MDOT) # _____

City of Baltimore # _____

Name Other Jurisdiction: _____ # _____

The Business is not a certified MBE/WBE, however, the ownership of the Business consists of _____% minorities and _____% women (for a total of _____%), each of which has operational and managerial control, interest in capital and earnings commensurate with their percent of ownership. Please select the ethnic group of the owner(s) regardless of MBE/WBE certification:

____ African American ____ Hispanic American ____ Caucasian
____ Asian American ____ Native American ____ Other

_____ The Business anticipates utilizing subcontractors for _____% of the work of the contract requirements.

_____ The Business anticipates utilizing MBE/WBE subcontractors for _____% of the work of the contract requirements. (Complete attached MBE/WBE forms)

Date: _____

By: _____

Name:
Title:
(Authorized Representative)

Taxpayer Identification Number (TIN) and Certification
(Substitute for IRS Form W-9)
COMPLETE BOTH SIDES OF FORM

Baltimore County, Maryland
 Office of Budget and Finance
 400 Washington Avenue, Room 148
 Towson, Maryland 21204

Certification of TIN and business name are required for all successful bidders prior to issuing a contract or purchase order. Completion of **SIDE 1** of this form is necessary to meet IRS regulations. All MBE/WBE vendors should also complete **SIDE 2**. For questions, call 410-887-3587.

SIDE 1

<p>List your legal business name below, as shown on your income tax return. Sole proprietors should list their individual name as noted on your social security card. You may enter a business name on line 2. Other entities must list your business name as shown on Federal tax documents. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the business name line (2). For limited liability companies (LLC) that are owned by an individual, the owner's name must be listed in the Name line (1) and the business name can be listed on the business name line (2). For limited liability companies that are corporations, partnerships, etc., enter the business name on Name line (1).</p>		
1. Name (as shown on your income tax return)		
2. Business name, if different from above		
Address		
City	State	ZIP Code
Remittance Address, if different from above		
City	State	ZIP Code
Contact Person	Title	
Phone Number () -	Ext:	Fax Number () -
E-mail address		
Taxpayer Identification Number (TIN)		
Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1. For individuals, this is your social security number (SSN). For other entities, it is your employer identification number (EIN). Note, this is the TIN shown on your federal tax documents.	Social Security Number [][][][] - [][][][][] OR	
	Employer Identification Number [][][] - [][][][][][][][]	
<input type="checkbox"/> CHECK HERE IF YOU ARE EXEMPT FROM BACK-UP WITHHOLDING		
<input type="checkbox"/> CHECK HERE IF YOU ARE TAX-EXEMPT, EXPLAIN:		
Filing Status (Ownership) (LLC is not acceptable)		
<input type="checkbox"/> Individual	<input type="checkbox"/> Sole Proprietor	
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	
<input type="checkbox"/> Other: (explain)		
CERTIFICATION:		
Under penalties of perjury, I certify that:		
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and		
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and		
3. I am a U.S. person (including a U.S. resident alien).		
Signature of U.S. Person		Date

SIDE 2

MBE / WBE Certification	
Maryland Department of Transportation (MDOT) Certification #: _____ Certification Date: ____ / ____ / ____ Pending: _____	City of Baltimore Certification #: _____ Certification Date: ____ / ____ / ____ Pending: _____

Business Ownership (Check Only One)					
<input type="checkbox"/>	G	Government Entity	<input type="checkbox"/>	O	Other: _____
<input type="checkbox"/>	H	Disabled	<input type="checkbox"/>	P	Non Profit
<input type="checkbox"/>	MA	Minority-owned, Not small business	<input type="checkbox"/>	W	Woman-owned, Small business
<input type="checkbox"/>	M	Minority-owned, Small business	<input type="checkbox"/>	WA	Woman-owned, Not small business
<input type="checkbox"/>	NS	Non-minority-owned, small business	<input type="checkbox"/>	X	Woman-owned, Minority, Small business
<input type="checkbox"/>	NL	Non-minority-owned, Large business	<input type="checkbox"/>	XA	Woman-owned, Minority, Not small business

Type of Business/Organization			
<input type="checkbox"/>	Association	<input type="checkbox"/>	Attorney
<input type="checkbox"/>	Government Entity	<input type="checkbox"/>	Educational Institution
<input type="checkbox"/>	Medical Service Provider	<input type="checkbox"/>	Non-profit Organization
<input type="checkbox"/>	Other: (explain)	<input type="checkbox"/>	Financial Institution

Ethnicity of Ownership (Check Only One)					
<input type="checkbox"/>	A	Asian American	<input type="checkbox"/>	I	American Indian/Alaskan Native
<input type="checkbox"/>	B	African American	<input type="checkbox"/>	N	Non-minority
<input type="checkbox"/>	H	Hispanic American	<input type="checkbox"/>	O	Other Ethnic Group:

Incorporation	
Incorporation State: _____ OR Date Business Started ____ / ____ / ____	

Signature		
I certify that the information shown on this registration is true and correct. I will advise the Purchasing Division immediately, in writing, of any change affecting this data.		
Signature: _____	Title: _____	Date: _____



BALTIMORE COUNTY, MARYLAND
INSURANCE PROVISIONS

1. GENERAL REQUIREMENTS

1.1 Coverages Required:

Unless otherwise required by the specifications or the contract, the Contractor/Vendor shall purchase and maintain the insurance coverages listed herein.

Insurance Companies must be acceptable to Baltimore County and have an A.M. Best Rating of A-, Class X or better.

1.2 Verification of Insurance:

Before starting work on the contract or prior to the execution of the Contract on those bid, the Contractor/Vendor shall provide Baltimore County, Maryland with verification of insurance coverage evidencing the required coverages.

1.3 Baltimore County as Additional Insured:

The coverage required, excluding Worker's Compensation and Employers' Liability and Medical Malpractice Liability/Professional Liability/Errors and Omissions Liability, must include **Baltimore County, Maryland** as an additional insured.

1.4 Contractor's/Vendor's Responsibility:

The providing of any insurance herein does not relieve the Contractor/Vendor of any of the responsibilities or obligations the Contractor/Vendor has assumed in the contract or for which the Contractor/Vendor may be liable by law or otherwise.

1.5 Failure to Provide Insurance:

Failure to provide and continue in force the required insurance shall be deemed a material breach of the contract.

2. INSURANCE COVERAGES

2.1 General Liability Insurance

2.1.1 Minimum Limits of Coverage:

Personal Injury Liability and Property Damage Liability Combined Single Limit - \$500,000 each occurrence

2.1.2 Such insurance shall protect the Contractor/Vendor from claims which may arise out of, or result from, the Contractor's/Vendor's operations under the contract, whether such operations be by the Contractor/Vendor, any subcontractor, anyone directly or indirectly employed by the Contractor/Vendor or Subcontractor, or anyone for whose acts any of the above may be liable.

2.1.3 Minimum Coverages to be Included:

- (a) Independent Contractor's coverage;
- (b) Completed Operations and Products Liability coverage; and
- (c) Contractual Liability coverage.

2.1.4 Damages not to be Excluded:

Such insurance shall contain no exclusions applying to operations by the Contractor/Vendor or any Subcontractor in the performance of the Contract including but not limited to: (a) Collapse of, or structural injury to, any building or structure; (b) Damage to underground property; or (c) Damage arising out of blasting or explosion.

2.2 Automobile Liability Insurance

2.2.1 Minimum Limits of Coverage:

Bodily Injury Liability and Property Damage Liability
Combined Single Limit - \$500,000
any one accident

2.2.2 Minimum Coverages to be Included:

Such insurance shall provide coverage for all owned, non-owned and hired automobiles.

2.3 Workers' Compensation and Employers' Liability Insurance

Such insurance must contain statutory coverage, including:

Employers' Liability insurance with limits of at least:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 policy limit
Bodily Injury by Disease - \$500,000 each employee

2.4 Other

Such other insurance in form and amount as may be customary for the type of business being undertaken by the Contractor/Vendor.

BID REPLY LABEL

*CUT ON THE DOTTED LINE AND
SECURE TO THE OUTSIDE OF YOUR
RESPONSE ENVELOPE OR CARTON.*

REQUEST FOR PROPOSAL
NO. P-165 10/7/16, 2:15 PM NATURAL GAS SUPPLY SERVICES TERM CONTRACT
TO: BALTIMORE COUNTY, MARYLAND PURCHASING DIVISION 400 WASHINGTON AVE, ROOM 148 TOWSON, MARYLAND 21204-4665

BE SURE TO SEPARATE THE PRICE PROPOSALS FROM THE TECHNICAL PROPOSALS. PRICE AND TECHNICAL PROPOSALS MUST BE BOUND SEPARATELY SO THAT EVALUATORS CAN REVIEW THE TECHNICAL PROPOSALS WITHOUT KNOWLEDGE OF THE PRICE PROPOSALS.

PLEASE USE THE LABELS BELOW TO CLEARLY MARK THE OUTSIDE OF BOTH THE TECHNICAL PROPOSALS AND PRICE PROPOSALS WITHIN YOUR ENVELOPE OR CARTON.

TECHNICAL PROPOSAL

PRICE PROPOSAL

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES TERM CONTRACT**

GENERAL CONDITIONS AND SPECIFICATIONS

1. BACKGROUND.

1.1 The Baltimore Regional Cooperative Purchasing Committee (BRPC) is a purchasing consortium consisting of County and Local government jurisdictions, Public Schools and Community Colleges in the Central Maryland region. BRPC has purchased natural gas cooperatively since the advent of natural gas deregulation behind BGE.

1.2 The following separate entity jurisdictions are participating in this procurement:

Anne Arundel County Government
Anne Arundel County Public Schools
Anne Arundel County Community College
Baltimore City Government
Baltimore City Public Schools
Baltimore County Government
Baltimore County Libraries
Baltimore County Public Schools
Baltimore County Revenue Authority
Baltimore Museum of Art
Carroll County Government
City of Annapolis
City of Bowie
Community College of Baltimore County
Harford County Community College
Harford County Government
Harford County Public Schools
Howard County Community College
Howard County Government
Howard County Public Schools
Walters Art Museum

1.3 The members have executed a memorandum of understanding (MOU) to govern the natural gas procurement program. This includes the establishment of an energy board that meets monthly to oversee the natural gas procurement program. BRPC's energy consultant (EnerNOC) also attends and participates at the monthly meetings. The natural gas supply services provider is also encouraged to attend the meetings at least annually.

1.4 The risk management and procurement strategy that BRPC has adopted and utilized over the last nine (9) years is designed to provide full price transparency, budget stability, risk management flexibility and lower overall costs. The strategy includes purchasing fixed rate quantities of natural gas commodity and basis within established hedge targets which provide discretion based on market conditions over the designed risk management timeframe which extends three years beyond the current fiscal year. The procurement strategy and structure includes the following:

1.3.1 Establishing separate dedicated balancing pools behind BGE for the DRS accounts (monthly metered with storage requirement) and the Daily Metered accounts.

- 1.3.2 Purchasing fixed rate natural gas commodity separately and independently from fixed rate basis contracts
 - 1.3.3 Purchase natural gas commodity and fixed rate basis contracts based on delivered quantities,
 - 1.3.4 Ability to purchase unhedged monthly natural gas requirements at the daily spot market (Gas Daily) and or at the monthly NYMEX settlement rate.
 - 1.3.5 Supplier service fee priced separately from basis contracts
- 1.6 BRCPC has engaged the services of EnerNOC, Inc., an independent energy advisory consultant ("Energy Consultant") to assist in developing and executing the strategy. EnerNOC's responsibilities include assisting in 1) development of the risk management strategy, 2) development and design of the purchasing structure, 3) development of purchase provisions of the Master Energy Supply and Purchase agreement, 4) assistance in development of the RFP to procure the Contractor, 5) ongoing forward price commitment purchases, 6) work with contractor on storage management decisions 7) ongoing risk management and measurement, 8) energy budgeting and 9) periodic reporting on portfolio performance, risk management strategy and fixed rate purchases.

2. ACCOUNT PROFILE.

Account/Consumption Summary (Approximate)

	<u>Number of Accounts</u>	FY 2015 Annual <u>Consumption (Dth)</u>
BGE DRS	1063	1,984,000
BGE Daily Metered	63	630,000
WGL (City of Bowie)	11	13,000
Total	<u>1,174</u>	<u>2,627,000</u>

3. SCOPE.

- 3.1 BRCPC desires to enter into a new contract with a single natural gas supply services contractor that will enable BRCPC to manage price and risk exposure over up to the next ten (10) years. The purpose of this RFP is to solicit offers from qualified suppliers in order to select a Contractor that enables BRCPC to execute its natural gas procurement strategy. Once a Contractor is selected a natural gas contract will be executed between the Contractor and **each separate BRCPC entity jurisdiction listed in section 1.2 above.**
- 3.2 The procurement structure has been designed to enable BRCPC to efficiently and cost effectively access the natural gas commodity markets and minimize transaction costs. The Contractor shall provide the following services:
 - 3.2.1 Firm delivery of natural gas supply and firm transportation of such natural gas to all of BRCPC facilities that are served through the BGE and WGL accounts provided.
 - 3.2.2 Enroll/unenroll accounts as required by each participating jurisdiction.
 - 3.2.3 Create and manage a dedicated BRCPC DRS account pool and BRCPC Daily Metered pool behind the local gas utility BGE and utilize both pools to meet BGE balancing requirements and minimize costs. Manage nominations, BGE storage and balancing requirements in coordination with BRCPC's energy consultant.

- 3.2.4 Basis: Provide fixed rate pricing offers by month for terms up to three (3) years for designated quantities anytime during the contract term.
- 3.2.5 Commodity purchases: Ability to enter into forward fixed price commitments for periods up to three (3) years beyond the current fiscal year anytime during the contract term based on NYMEX prices.
- 3.2.6 Purchases for Unhedged Monthly Delivery Requirements:
 - 3.2.6.1 Each month supplier to contact BRCPC's Energy Consultant to obtain instructions on what portion of the unhedged delivery requirement will be purchased based on the NYMEX monthly settlement price and what portion will be purchased on the daily spot market (Gas Daily) for the following month's gas delivery.
- 3.2.7 Unbundled Pricing: the Contractor will breakout the following monthly costs (for the portfolio as a whole – not for each account) which will determine the monthly portfolio supply rate for each account:
 - 3.2.7.1 DRS portfolio (refer to Exhibit A for example of supply rate calculation):
 - 3.2.7.1.1 Fixed rate basis cost – contract quantities
 - 3.2.7.1.2 First of month basis cost
 - 3.2.7.1.3 Weighted average (wacog) commodity cost of fixed rate NYMEX contracts – contract quantities
 - 3.2.7.1.4 Monthly cash settlement price (Gas Daily) – covering purchase and/or sale quantities representing the difference between the monthly nomination quantity and the monthly delivered quantity.
 - 3.2.7.1.5 Monthly BGE storage and balancing fees
 - 3.2.7.1.6 Monthly cost of carry on storage balances
 - 3.2.7.1.7 Supplier service fee
 - 3.2.7.2 Daily metered portfolio:
 - 3.2.7.2.1 Fixed rate basis cost – contract quantities
 - 3.2.7.2.2 First of month basis cost
 - 3.2.7.2.3 Weighted average (wacog) commodity cost of fixed rate NYMEX contracts – contract quantities
 - 3.2.7.2.4 Monthly cash settlement price – covering purchase and/or sale quantities representing the difference between monthly nomination quantity and the monthly delivered quantity.
 - 3.2.7.2.5 Supplier service fee
 - 3.2.7.3 Billing:

- 3.2.7.3.1 Separate monthly billing for each jurisdiction for all DRS and Daily Metered Accounts.
 - 3.2.7.3.2 Submit billing in electronic form to each jurisdiction
 - 3.2.7.3.3 Monthly billing for Daily Metered accounts to include service period delivered quantities, unit price and extension. For DRS accounts to include utility metered consumption for the service period, unit price and extension.
- 3.3 BRCPC is not engaging in purchases of any futures contract whatsoever, or any financial mechanism to hedge any price that is independent of the physical gas delivered to BRCPC via this RFP. There is no interest in any such financial futures contracts, be they NYMEX or otherwise, that is created by this RFP. The NYMEX reference is simply the objective, pricing mechanism used in a formula to define the price of gas for what is physically delivered to BRCPC.
- 3.4 BRCPC is not requesting a securities account or any variation of such via this RFP. BRCPC is requesting a pricing mechanism for physically delivered gas to BRCPC only. What the Contractor does behind the scenes in their account is totally up to them, and need not match what BRCPC has committed to per this RFP. BRCPC has no contractual ability to cause the Contractor under this RFP (contract) to engage in any type of financial or physical contract – that is totally a Contractor's choice.
- 3.5 Transfer/Delivery/Assumption of Fixed Rate Commitments
 - 3.5.1 If open fixed rate commitments remain with the predecessor contractor upon expiration/termination of the prior natural gas supply services contract, the contractor agrees to work with BRCPC and the predecessor contractor to accommodate the transfer of those open commitments from the predecessor contractor to the contractor. If such transfer cannot be accommodated, the open fixed rate commitments will be liquidated by the predecessor contractor and BRCPC will be responsible for any gains and losses upon liquidation of those commitments. Regardless of whether the commitments are able to be transferred from the predecessor contractor to the contractor, BRCPC remains responsible for all fixed rate commitments.
 - 3.5.2 If open fixed rate commitments remain with the contractor upon expiration/termination of the contract, the contractor agrees to work with BRCPC and the successor contractor to accommodate the transfer of those open commitments from the contractor to the successor contractor. If such transfer cannot be accommodated, the open fixed rate commitments will be liquidated by the contractor and BRCPC will be responsible for any gains and losses upon liquidation of those commitments. Regardless of whether the commitments are able to be transferred from the contractor to the successor contractor, BRCPC remains responsible for all fixed commitments.

4. CONTRACTOR SERVICE FEE PRICING.

- 4.1 The Contractor service fee shall be quoted on a per deka therm basis on quantities delivered to the local utility (BGE or WGL). The natural gas supply services contract will be a cost plus arrangement; therefore the Contractor's service fee should reflect **solely** the Contractor's charge to service the portfolio. The price should exclude all transportation, BGE balance and storage fees, and risk premiums associated with volumetric and pricing risk as that will be assumed by the portfolio and not the Contractor
- 4.2 The Contractor may offer prompt payment discount. Refer to contract pricing sheet.

5. MASTER NATURAL GAS SUPPLY AND PURCHASE CONTRACT.

5.1 Key provisions of the Contract will include:

5.1.1 Fixed fee per Dth for base service that reflects low supplier risk.

5.1.2 Ability to enter into forward fixed price commitments for monthly quantities for periods up to three (3) years beyond the current budget year at market-based prices.

5.1.3 Pricing Components:

5.1.3.1 Basis for contract quantities

5.1.3.2 Commodity hedge contracts

5.1.3.3 NYMEX settlement and/or gas daily pricing for difference between nomination and delivered quantities

5.1.3.4 BGE storage and balancing costs (for DRS accounts only)

5.1.3.5 Monthly cost of carry on natural gas storage balances (for DRS accounts only)

5.1.3.6 Supplier Service Fee

5.1.4 Basis Contracts (Fixed Price Transactions):

5.1.4.1 BRPC reserves the right to direct supplier to transact with any counterparty with which supplier has an established trading relationship for the benefit of their account.

5.1.5 Commodity Hedge Contracts (Fixed Price Transactions):

5.1.5.1 Contractor to provide market based fixed price transactions of natural gas commodity at BRPC request based on current NYMEX prices.

5.1.5.2 Contractor must maintain sufficient credit or collateral to secure fixed price transactions pursuant to industry standards.

6. PROPOSAL REQUIREMENTS.

6.1 Each offeror's proposal must include the following:

6.1.1 Service fee statement.

6.1.2 Statement of compliance with scope/structure or alternatives.

6.1.3 Statement of product and market experience

6.1.4 Approximate amount of gas (dth) managed behind BGE on a daily basis

6.1.5 Financial

6.1.5.1 Financial Statements (most recent 3 years)

6.1.5.2 Corporate Structure

6.1.6 Customer references (5)

6.1.7 Evidence of Valid State of Maryland Supplier License

7. PROCUREMENT SCHEDULE.

- 7.1 August 10, 2016 - RFP advertised on Baltimore County web site.
- 7.2 August 23, 2016 Pre-Proposal Conference.
- 7.3 September 14, 2016 - Last day for Offeror's to submit questions
- 7.4 September 30, 2016 - Solicitation Amendment issued (if needed)
- 7.5 October 7, 2016 - Proposals Due by 2:15 p.m. EST.
- 7.6 October 18, 2016 - Evaluation Committee meets to short list Offerors.
- 7.7 October 20, 2016 - Short listed Offerors notified
- 7.8 October 27, 2016 - Oral Discussions with short listed Offerors.
- 7.9 November 3, 2016 - Contractor Selected.
- 7.10 December, 2016 - Contract documents drafted and approved.
- 7.11 January , 2017 - Contract documents executed and Contract awarded.
- 7.12 March 1, 2017 - Contract Start-Up.

8. TERM OF AGREEMENT. The term of this contract shall be for one (1) year. Each BRCPC Entity reserves the right to renew this contract for nine (9) additional one year renewal options under the same terms and conditions. Each BRCPC Entity will automatically renew this contract on each option year unless notice is given to the Contractor that the contract is not renewed.

9. PRE-PROPOSAL CONFERENCE. A pre-proposal conference is scheduled for Tuesday, August 23, 2016, at 1:00 p.m., at the Baltimore Metropolitan Council, McHenry Row, 1500 Whetstone Way, Baltimore, MD 21230.

10. QUESTIONS AND INQUIRIES; ADDENDA.

- 10.1 Questions will be entertained at the conference. If it becomes necessary to revise any part of this RFP, addenda will be posted on the web site at www.baltimorecountymd.gov/purchasing.
- 10.2 Offerors must acknowledge, in writing, receipt of all addenda in the text of their proposals. All official correspondence in regard to the specifications should be directed to and will be issued by the Purchasing Division. Offerors are cautioned that the County assumes no responsibility for oral explanations or interpretations of solicitation documents.
- 10.3 **The deadline for written questions pertaining to this solicitation is close of business on September 14, 2016 unless subsequently extended by BRCPC.**

11. **EVALUATION OF OFFERS.** Award will be made to the responsible offeror whose proposal best meets the needs of the County as set forth herein.
- 11.1 Proposals will be evaluated based on the following criteria, listed in order of importance.
 - 11.1.1 Compliance with scope of work.
 - 11.1.2 Experience with similar products/structures; references.
 - 11.1.3 Key staff
 - 11.1.4 Financial stability, credit/security status.
 - 11.1.5 Local market experience.
 - 11.1.6 MBE/WBE participation plan.
 - 11.1.7 Price: Contractor's service fee (price proposal page). **SUBMIT PRICE SHEET IN SEPARATE SEALED PRICE PROPOSAL ENVELOPE.**
 - 11.2 After consideration of the factors set forth in this RFP, the committee will recommend award to the offeror whose proposal is most advantageous to the County.
 - 11.3 This RFP will result in the submission of "proposals" (not "bids"), and the evaluation and award process will be based on both scored technical and price responses, not just price. Therefore, the County may enter into negotiations with offerors and invite "best and final offers" as deemed to be in the best interest of the County. Negotiations may be in the form of face-to-face, telephone, facsimile or written communications, or any combination thereof, at the County's sole discretion.
 - 11.4 Offerors are strongly advised not to prepare their proposal submissions based on any assumption or understanding that negotiations will take place. Offerors are advised to respond to this RFP fully and with forth-rightness at the time of proposal submission.
 - 11.5 Non-acceptance of an individual offer may mean that one or more other proposals were more advantageous, or that all were rejected.
12. **ORAL PRESENTATION.** Offerors may be required to clarify their proposals by making individual presentations to the evaluation committee.
13. **CONTRACTOR QUALIFICATIONS.**
- 13.1 At the option of the County, offerors may be required to furnish evidence of sufficient financial responsibility to fulfill this contract, and evidence that they have, or can obtain the necessary equipment, manpower, and storage facility to ensure delivery within the parameters of this contract.
 - 13.2 Offerors must provide at least five (5) references (names of contact persons and phone numbers) of similar sized contracts serviced during the past ten (10) years.
 - 13.3 Prior to award of this contract, the County reserves the right to inspect the facilities of any responsive offeror. The reputation of bidders regarding adequacy of their resources and facilities, and past records of their skillful performance of work of the type and magnitude required herein shall be considered when making the award.

14. **SUBMITTAL PROCESS AND REQUIRED COPIES.** Each offeror shall submit **one original, clearly marked as such, and nine (9) copies** of the complete proposal. The cost of preparing proposals is the responsibility of offerors. The County will not photocopy your proposal documents for the purpose of complying with this provision requiring a pre-determined number of duplicate copies. Failure to provide the required number of complete duplicate copies may result in rejection of your proposal.
- 14.1 Proposals must be securely sealed and addressed to the Baltimore County Purchasing Division, 400 Washington Avenue, Room 148, Towson, Maryland 21204 using the label provided in the solicitation package. Copies of the label must be made for multiple packages.
- 14.2 Technical and price proposals are to be mailed together in one package, but the Technical and Price Proposals must be bound separately. There shall be no reference to the price of products and services in the Technical Proposal. Proposals may be either mailed or hand-delivered. If the proposal is sent by mail or commercial express service, the Offeror shall be responsible for actual delivery of the proposal to the proper County office before the deadline. All timely proposals become the property of the County.
- 14.3 Late proposals will not be considered. Proposals received after the deadline will be returned unopened.
- 14.4 Proposals should be prepared simply and economically, providing a straightforward, concise description of the offer, and all required information. They should be printed on recycled paper and duplexed if possible; staples, clips or rubber bands are preferred to ring binders, and unnecessarily elaborate brochures or other expensive visual presentations are neither necessary nor desired. Each page of the proposal should be consecutively numbered.
- 14.5 Each proposal shall be accompanied by an executed procurement affidavit which is provided by the Purchasing Division in the solicitation package.
15. **FUNDING OUT.** If funds are not appropriated or otherwise made available to support contract continuation in any fiscal year, each entity shall have the right to terminate the contract without any obligation or penalty, however each entity is responsible for any fixed rate commitments that extend beyond the termination date.
16. **INSURANCE.**
- 16.1 The Supplier will be required to provide verification of insurance coverage in accordance with the attached requirements. The Supplier will have fifteen (15) calendar days to comply with this requirement, excluding County holidays and non-work days, if applicable.
- 16.2 In addition to the General Insurance Requirements and Coverages as stated on the Insurance Provisions Form, the Supplier is required to have the following insurance coverages:
- 16.2.1 Professional Liability / Errors and Omissions Liability Insurance
- Minimum Limits of Coverage:
- \$1,000,000 per Claim or Each Occurrence
- \$1,000,000 in the Aggregate
- 16.2.2 Cyber Insurance – Please state the amount of coverage in your proposal response.

- 16.3 The Insurer must maintain the insurance coverage required by the County while this agreement is in force, including automatic renewal terms, and shall provide documentation of such insurance in a form satisfactory to the County when required.
- 16.4 In the event the Supplier changes their insurance carrier, new verification of insurance coverage must be provided to the County by the new insurance carrier within ten (10) days of the change of policy.

17. **COOPERATIVE PURCHASE.**

- 17.1 The County reserves the right to extend all of the terms, conditions, specifications, and unit or other prices of any contract resulting from this bid to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities including non-public schools. Only qualifying entities whose natural gas accounts reside behind BGE are eligible to join the BRCPC managed DRS and Daily Metered portfolios. This is conditioned upon mutual agreement of all parties pursuant to special requirements which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested.
- 17.2 The County assumes no authority, liability or obligation, on behalf of any other public or non-public entity that may use any contract resulting from this bid. All purchases and payment transactions will be made directly between the contractor and the requesting entity. Any exceptions to this requirement must be specifically noted in the bid/proposal response.

18. **MINORITY AND WOMEN BUSINESS ENTERPRISE REQUIREMENTS:** The resulting minority and women business participation requirement for this contract is **0%**.

- 18.1 Each Contractor must comply with all Minority and Women Business Enterprises (M/WBE) participation requirements. Included with this solicitation package are copies of the County's M/WBE policy and provisions and M/WBE participation schedule forms. All M/WBE participation forms must be completed, executed, and **returned to the Purchasing Division with the bid** if a goal has been assigned. To request M/WBE participation forms, contact the buyer on the solicitation.
- 18.2 It is the intention of the contract, that the Contractor complies with the required participation levels on a cumulative basis for the full term of this agreement rather than on a job-to-job basis. The successful Contractor shall estimate the participation level (for the full term of the contract) for each subcontractor and/or suppliers listed on the participation schedule.
- 18.3 The Prime Contractor shall make a genuine good faith effort to comply with the Baltimore County Minority Business program's minimum 15% subcontracting goal. However, the percentage requirement may vary. The Prime Contractor shall make a good faith effort to obtain minority subcontractor participation even if the Prime Contractor has the capability to complete the work with its own workforce. This good faith effort is also applicable to Prime Contractors who are themselves, minority-owned or woman owned firms.
- 18.4 All prime contractors and MBE/WBE sub-contractors are required to report monthly to the County through an online using the MBE/WBE Compliance Portal (PRISM). The portal can be found under *Compliance Reporting for Prime Contractors and Sub-Contractors* at www.baltimorecountymd.gov/go/mwbe. The contractor must provide a contact person and contact information for the MBE/WBE compliance reporting. If the contractor cannot submit his/her report on time, he/she will notify the County MBE/WBE office and request additional time to submit the report. Failure of the contractor to report in a timely manner may result in a finding

of noncompliance. The County in its sole discretion may require additional reports regarding MBE/WBE. Questions regarding the use of this system can be directed to the MBE Office at mwbe@baltimorecountymd.gov or call 410-887-3407.

19. "SAMPLE" FORM CONTRACT.

- 19.1 The County's form contract is attached as part of this solicitation. By the act of submitting a proposal, the offeror expressly acknowledges that he/she/it accepts the terms and conditions as stated in the form contract unless exceptions are submitted in writing with the proposal.
- 19.2 The offerors' acceptance of, or deviations from, the form contract terms and conditions are considered during the evaluation and subsequent award.
- 19.3 If the offeror submits an exception, which alters the County's risk, liability, exposure in, or the intent of this procurement, the County reserves the right in its' sole and absolute discretion to deem the offeror non-responsive.

20. ELECTRONIC VERSION SUBMITTAL.

- 20.1 In accordance with the General Instructions for Solicitations, #1.9, Instructions, Forms and Specifications, responses to Requests for Bids and Requests for Proposals shall be accompanied by an electronic version (CD) of the bid proposal in PDF format. The CD must be labeled with the bid number, the bid title, and the bidders' name submitting the response. All bids must be submitted in a sealed envelope or carton as appropriate. This does not apply to Requests for Quotations.

BALTIMORE COUNTY, MARYLAND
REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES TERM CONTRACT
Due Date: 10/7/16, Time: 2:15 P.M.

PROPOSAL SIGNATURE COVER PAGE
PROPOSAL I, II

SUBMISSION OF A BID/PROPOSAL IN RESPONSE TO THIS SOLICITATION EVIDENCES THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS THEREIN. THIS PAGE MUST BE PROPERLY SIGNED BY AN AUTHORIZED OFFICIAL IN THE FIRM WHO REPRESENTS AND WARRANTS ACCEPTANCE OF ALL TERMS AND CONDITIONS OF THE REQUEST FOR BID/ REQUEST FOR PROPOSAL. THE PERSON SIGNING THE BID/PROPOSAL MUST INITIAL ANY ALTERATIONS IN FIGURES ON THIS FORM IN INK.

COMPANY NAME: _____

ADDRESS: _____

(City) (State) (Zip Code)

TELEPHONE: _____ FAX: _____

SIGNED: _____ DATE: _____

PRINT NAME: _____ TITLE: _____

TAX ID NUMBER (FIN/SS#) _____ EMAIL: _____

Is your company a certified Minority Business Enterprise? Bidders must complete the applicable Minority Participation Affidavit attached.

Initial to confirm that a complete electronic version of the bid proposal response is included in the bid package. _____

Is your firm in compliance with all applicable laws and regulations relating to the employment of illegal aliens? If YES, check here _____

NOTICE: A notice required to be delivered shall be deemed to have been received when such notice has been sent to the following address and individual:

F.O.B. Destination (unless otherwise stated herein).

Delivery shall be made within _____ calendar days after receipt of order.

Payment Terms: _____ Cash discounts for less than 30 days will not be considered in determining awards. However, should that bidder obtain award by consideration of the gross price, the County should make every effort to obtain the discount. The County will not accept payment terms with a period of less than (30) days.

If your firm is not already receiving email notification of new solicitations and amendments, you may register for email notification on the County's web site at <http://www.baltimorecountymd.gov/purchasing>.

BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES TERM CONTRACT
 Due Date: 10/7/16, Time: 2:15 P.M.
PROPOSAL I

PRICE SHEET PAGE 1 OF 1		REQUEST FOR PROPOSAL	
LINE NO.	COMMODITY/SERVICE DESCRIPTION	UNIT OF MEASURE	UNIT PRICE
1	Service Fee Service Fee, Supply Services, Implementation Of BRCPC Natural Gas Procurement Strategy, priced per Deka Therm, As Per Specifications.	Deka therm	\$ _____
2	Carrying Charge: Carrying Charge on Storage Gas for DRS Published Index (state referenced index such as "1 Month Libor" or "3 Month Libor" or "Fixed"): Adder to index (if any) – state as an annual percentage rate (for instance if 1 Month Libor = 1.0% and adder is 1.50%, then annual rate = 2.5%, insert 1.50% as the adder to index line to the right. If fixed rate insert the annual % rate.	%	_____ _____%

GRAND TOTAL \$ _____

COMPANY NAME: _____

FED ID OR SOCIAL SECURITY NO. _____

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-165
NATURAL GAS SUPPLY SERVICES, TERM CONTRACT**

ADDITIONAL PARTICIPATING ENTITY

One (1) additional government entity is participating in this solicitation. With some differences, this entity purchases under the same purchase structure, vendor work scope and contract terms as the BRCPC group. The additional entity will have a separate natural gas supply services contract with the selected supplier and this entity may select their own vendor (multiple vendor contracts can be awarded).

Below is a summary of the additional natural gas purchase including contract/scope of work features unique to that entity.

Montgomery County (MD) Board of Education (MCBE)

MCBE is the largest public school system in the State of Maryland and the 16th largest public school system in the U.S. MCBE consists of over 200 schools with all gas service located behind the Washington Gas and Light Maryland (WGL-MD) gas utility. The MCBE natural gas procurement program is managed by the Assistant Director of Facilities and his Energy Management Team. MCBE has been purchasing natural gas supply in the same manner as BRCPC since 2011.

Contract/Work Scope Features

Contracting Entity: Montgomery County Board of Education (MCBE)

Contract Term: One (1) year with (9) one year renewal options at the sole right of MCBE

Physical Delivery Start Date: July 1, 2017

Natural Gas Accounts:

- 279 firm delivery WGL-MD accounts
- FY 2016 (July 1, 2015 – June 30, 2016) delivered volume of 514,700 dths and average annual delivered volume for the FY 2013 – FY 2016 delivery period was 621,038 dths

Dedicated firm balancing pool Behind WGL-MD – only MCBE WGL-MD firm delivery accounts enrolled in separate balancing pool

Monthly Billing:

1. One master portfolio invoice providing separate line item quantities (dths), unit cost (\$/dth) and \$ cost for:
 - fixed rate basis
 - first of month basis,
 - fixed rate commodity
 - monthly settlement commodity
 - gas daily purchases
 - gas daily sales
 - LDC pass thru charges*
 - Transportation charges/credits**

- Supplier service fee
2. Allocation of monthly portfolio costs to accounts via excel spreadsheet
- delivered quantities by account (dths)
 - calendar month portfolio unit cost (\$/dth)
 - delivered cost by account (\$) (delivered volume times calendar month portfolio unit cost)

*Includes the following WGL charges to the supplier that are passed thru to the end use customer:

- Balancing charges
- Inventory transfer charges/(credits)
- FSS Reservation Charge
- FSS Capacity Charge
- SST Reserve Charge
- Imbalance commodity charge
- Equalization charges (Released firm transportation dths)
- Hexane recovery charges

**Represents WGL transportation charges for the enrolled accounts and credits realized by supplier on capacity released.

BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-165
MONTGOMERY COUNTY BOARD OF EDUCATION (MCBE)
NATURAL GAS SUPPLY SERVICES TERM CONTRACT
 Due Date: 10/7/16, Time: 2:15 P.M.
PROPOSAL II

PRICE SHEET PAGE 1 OF 1			
LINE NO.	COMMODITY/SERVICE DESCRIPTION	UNIT OF MEASURE	UNIT PRICE
1	Service Fee: Service Fee, Supply Services, For providing the natural gas supply services as provided in the contract work scope, priced per Dekatherm on delivered quantities, as per specifications.	Dekatherm	\$ _____

WHERE LANGUAGE IS BRACKETED SELECT ONE OF THE OPTIONS AND DELETE THE OTHER OR INSERT THE INFORMATION REQUESTED. PLEASE CONTACT THE PURCHASING DIVISION AND THE OFFICE OF LAW BEFORE THIS FORM IS MODIFIED

**BALTIMORE COUNTY, MARYLAND
CONTRACT**

THIS AGREEMENT made this ____ day of _____, ____ (the "Agreement") is by and between **BALTIMORE COUNTY, MARYLAND**, a body corporate and politic, (hereinafter "County") and **[NAME AND ADDRESS OF CONTRACTOR]** (hereinafter the "Contractor").

WHEREAS, the said Contractor, hereby covenants and agrees to [perform all services] [deliver all goods], in strict and entire conformity with the Attachment A entitled, ["Services and/or Scope of Work to be Performed", "Goods To Be Provided"], [and] any Master Agreement subsequently issued and the **[Request for Bid, Request for Proposal, Request for Quotation]** Bid No. _____, as amended, and the Contractor's response and any amendments or revisions thereto [If material business terms are contained in correspondence or emails subsequent to initial bid response, Purchasing should list such correspondence and emails here] (collectively, the "Bid").

NOW THEREFORE, in consideration of the mutual promises and covenants, the parties hereto agree that the County shall pay the Contractor an amount as set forth herein for [services and/or scope of work rendered][goods provided] in accordance with this Agreement, the other attachments hereto (ALL ATTACHMENTS MUST BE DESCRIBED HERE AND PROPERLY LABELED) and if applicable, the Bid and the Master Agreement all of which are hereby incorporated into and made a part of this Agreement. Notwithstanding any other terms or provisions of this Agreement, in the event the County is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the General Assembly of Maryland or the Baltimore County Council, by a court of competent jurisdiction or by administrative delay not due to the fault of the County (and its members and agents), then the County shall not be liable directly or indirectly for any claims caused to or suffered by the Contractor or any other person in connection with or as a result of such prevention, restriction or delay. In addition the parties hereto agree as follows:

1. **Contractor's Duties.** The Contractor shall be an independent contractor and not an employee of the County, and shall be responsible for the reporting and remittance of all state and federal taxes. The Contractor shall [perform the services] [provide the goods] outlined in Attachment A hereto. The Contractor's [services and/or scope of work to be performed] [goods] will be provided with due care and in a manner satisfactory to the County and in accordance with all applicable [professional] standards.

2. **Compensation.**

2.1 In consideration of the [services and/or scope of work to be performed][goods] to be provided by the Contractor, the County shall pay the Contractor [SELECT ONE OF THE FOLLOWING OPTIONS:][the sum of _____ Dollars (\$____)] [an amount equal to 90% of

the amount invoiced pursuant to Paragraph 2.2 below. Ten percent (10%) of each disbursement shall be retained by the County and disbursed in a lump sum upon [completion of the services and/or scope of work described herein][delivery of the goods described herein] in a manner satisfactory to the County, in its sole discretion.] [an hourly rate of \$_____ per hour for an approximate total of ____ hours and shall reimburse the Contractor for eligible expenses incurred by the Contractor in the performance of the Contractor's responsibilities and obligation under this Agreement. The eligible expenses are set forth in Attachment A [and in no event shall eligible expenses exceed \$_____ during the entire term of this Agreement].] [in accordance with the unit prices set forth in the Bid] [in accordance with the fee schedule attached hereto as Attachment].

2.2 The Contractor shall submit invoices to the County [SELECT ONE OF THE FOLLOWING OPTIONS: [monthly] [quarterly] [insert the time period for submission of invoices]. The Contractor's invoices shall reflect the:

- Contractor's name
- Address
- Federal tax identification number
- Order number and line number(s) that correspond with resulting orders
- [Goods provided][Services and/or scope of work performed] during the preceding billing period

Original invoices shall be submitted to Office of Budget and Finance, Disbursements, 400 Washington Avenue, Room 148, Towson, Maryland 21204. [DELETE IF NOT APPLICABLE] Copies of invoices shall be sent to [Agency Name and Address]. Invoices in the proper form and approved by the County shall be paid by the County within thirty (30) days of receipt thereof. The County reserves the right to approve such invoices, in its sole discretion, and to request such detail and additional information as the County, in its discretion deems appropriate.

[DELETE IF NOT APPLICABLE] [Cash Discount Periods will be computed from the date of delivery and acceptance of the goods ordered, or the date of receipt of correct and proper invoices prepared in accordance with terms of Baltimore County's order, whichever date is later.]

2.3 [In no event shall the total compensation paid to the Contractor under this Agreement exceed the sum of Twenty Five Thousand Dollars (\$25,000) unless the County Council approves this Agreement and the term is thereby extended as described in Paragraph 3.1 below.] [In no event shall the compensation paid to the Contractor exceed the sum of _____ Dollars (\$_____) [in any contract year] [during the Initial Term of this Agreement, as defined below] [or during any renewal period] [provided, however, that the County may entertain a request for escalation in any year subsequent to the first year in accordance with [SELECT ONE OF THE FOLLOWING: [Paragraph ___ of the Invitation to Bid] OR [Paragraph ___ of this Agreement]]. [In no event shall the total compensation paid to the Contractor under this Agreement exceed the sum of _____ Dollars (\$_____) during the entire term of this

Agreement including renewals thereof.][In no event shall the compensation paid to the Contractor exceed the sum of the County Council approved appropriation during the entire term of this Agreement including renewals thereof.]

3. **Term.**

3.1 This Agreement shall be [retroactively] effective [SELECT ONE OF THE FOLLOWING: [as of the date above written and] [when it has been properly signed by all parties hereto and][when executed by the County and] [from _____, 201_ until _____, 201_, unless the County Council approves this Agreement. In the event the County Council approves this Agreement, the term of this Agreement] shall continue through [Insert Date] [(the "Initial Term")], at which time the County may exercise its option to renew set forth in Paragraph 3.2 below], unless sooner terminated pursuant to this Agreement. [The County shall have the option of extending this Agreement at the end of the Initial Term or any renewal term for an additional [SELECT ONE OF THE FOLLOWING TIME PERIODS: [30] [60] [90] days], on the same terms and conditions, by providing written notice of its intent to extend to the Contractor. In the event the County elects to extend this Agreement, the Contractor shall continue to submit invoices monthly, for [services and/or scope of work rendered] [goods provided] in the manner prescribed in Paragraph 2 hereof. Any compensation [or reimbursement] paid during the extension period shall, when added to sums already disbursed hereunder, not exceed the maximum amount set forth in Paragraph 2 of this Agreement. In the event any extension changes the terms and conditions set forth herein, including but not limited to, a change in the compensation, approval of the Baltimore County Council may be required.]

[3.2 The County reserves the right to renew this Agreement for [insert renewal period] on the same terms and conditions set forth herein. [INSERT ANY CHANGES TO THE TERMS, i.e. COMPENSATION, UPON RENEWAL OF AGREEMENT, OTHERWISE, IT MUST BE RENEWED ON THE SAME TERMS AND CONDITIONS] The County will automatically renew this Agreement at the end of the Initial Term and each renewal term (except the last) unless it provides written notice of non-renewal to the Contractor prior to the end of the then current term. Unless set forth in a written amendment, the compensation[, reimbursement] and manner of payment set forth in Paragraph 2 shall remain unchanged, including but not limited to, the maximum amount of compensation [and reimbursement] available hereunder. In the event any renewal changes the terms and conditions set forth herein, the approval of the Baltimore County Council may be required.]

4. **Contractor's Representations and Warranties.** The Contractor hereby represents the following:

4.1 [USE FOR CORPORATIONS, LIMITED OR GENERAL PARTNERSHIPS OR LIMITED LIABILITY COMPANIES; DELETE IF CONTRACTOR IS AN INDIVIDUAL] The Contractor is a [corporation][limited partnership][general partnership][limited liability company], duly formed and validly existing under the laws of the State of [INSERT STATE OF INCORPORATION] and is qualified to do business and is in good standing in the State of Maryland.

4.2 [USE FOR CORPORATIONS, LIMITED OR GENERAL PARTNERSHIPS OR LIMITED LIABILITY COMPANIES; DELETE IF CONTRACTOR IS AN INDIVIDUAL] The Contractor has the power and authority to consummate the obligations and responsibilities contemplated hereby, and has taken all necessary action to authorize the execution, delivery and performance required under this Agreement.]

4.3 [USE FOR CORPORATIONS, LIMITED OR GENERAL PARTNERSHIPS OR LIMITED LIABILITY COMPANIES; DELETE IF CONTRACTOR OR INDIVIDUAL]The Contractor and the person executing this Agreement for the Contractor each warrant that [he][she] is [duly authorized by the Contractor] [is the person set forth in the Procurement Affidavit with the authority] to execute and seal this Agreement on the Contractor's behalf.

4.4 SELECT ONE OF THE FOLLOWING OPTIONS: A. [The [professional] services and/or scope of work to be provided under this Agreement shall be performed competently and with due care, in accordance with all applicable laws, codes, ordinances, regulations and licensing requirements and free from defects in workmanship and materials, as applicable. The parties understand and agree that this Agreement may be for the provision of a combination of goods and services. In such case, the parties hereby agree that the warranties of merchantability and fitness for a particular purpose and use shall apply to the portion of this Agreement that is pertaining to or for goods. The parties understand and agree that the County shall rely upon all express warranties contained in this Agreement, including but not limited to the Bid, and any sample or model presented by the Contractor and expressly accepted by the County.] OR B. [The goods to be delivered shall comply with the implied warranties of merchantability, fitness for particular purpose and use and warranties of title and against infringement, and all express warranties contained in this Agreement, including but not limited to the Bid.]

4.5 The Contractor has obtained and shall continue to maintain, at its own cost, such licenses and certifications as are necessary to provide the services and/or scope of work and provide the goods, as applicable, required pursuant to this Agreement, and shall present such licenses to the County upon its request for the same.

4.6 The Contractor has delivered to the County such written financial statements, schedules or reports in such form and containing such information and accompanied by such documents as requested or required by the County concerning the financial condition of the Contractor. Such documentation fairly and accurately represents the financial condition of the Contractor as of their date and the results of its operations for the period then ended. There has been no material adverse change in the financial condition of the Contractor or the results of its operations since the date of such financial statements, schedules or reports.

4.7 All representations and warranties made in the Procurement Affidavit[, the Bid response], the Contract Affidavit, attached hereto as Attachment C and incorporated herein, and this Agreement remain true and correct in all respects throughout the term of this Agreement.

5. **Termination for Convenience.**

5.1 The County may terminate this Agreement, in whole or in part, without cause, by providing written notice thereof to the Contractor at least thirty (30) days prior to the intended date of termination at the address set forth below, or at such other address as may be later designated by the Contractor in writing. The Contractor acknowledges that the absence of a reciprocal right of termination for convenience does not render this Agreement illusory or unenforceable.

5.2 In the event of termination, without cause, the County shall advise the Contractor in writing of the termination date and of work to be performed during the final days prior to contract termination. The Contractor shall be paid for all reasonable costs incurred by the Contractor up to the date of termination set forth in the written notice of termination. Payment shall be made in accordance with the provisions of Paragraph 2 of this Agreement.

6. **Insurance.** The Contractor shall provide evidence of insurance as required by the County [from time to time][pursuant to the insurance requirements attached hereto as Attachment ____] in form and amounts acceptable to the County. The Contractor shall maintain the insurance coverages required by the County while this Agreement is in force, and provide documentation of such insurance in a form satisfactory to the County. Such documentation may, in the discretion of the County, be in the form of binders or declarations from the insurance company. [INCLUDE IF THERE ARE ATTACHED INSURANCE REQUIREMENTS: In the event of a conflict between the provisions of the attached insurance requirements set forth in the solicitation and this Agreement, the provisions of this Agreement shall prevail.]

7. **Default.** The term "Default" as used in this Agreement shall mean the occurrence or happening, from time to time, of any one or more of the following:

7.1 **Representations and Warranties.** If any representation or warranty, expressed or implied, of the Contractor and pertaining to this Agreement shall prove at any time to be incorrect or misleading in any material respect either on the date when made or throughout the term of this Agreement.

7.2 **Compliance with Covenants and Conditions.** If the Contractor shall fail to comply with the terms of any covenant, condition, agreement or any express or implied warranty contained in this Agreement.

7.3 **Performance of Contractual Obligations.** If the services and/or scope of work hereunder are not performed in good faith and in accordance with the provisions of this Agreement [FOR CAPITAL IMPROVEMENT CONTRACTS: , including but not limited to, time frames specified or the completion schedule which is described in Attachment A.][If the delivery of the goods that are the subject of this Agreement [SELECT ONE: [was not made][is not being made] in good faith and/or in accordance with this Agreement, including but not limited to, the delivery schedule which is attached hereto as Attachment _____].

7.4 **Conditions Precedent to Any Disbursement.** If the Contractor shall be unable to satisfy any condition precedent to its right to receive a disbursement.

7.5 **Bankruptcy.** If the Contractor becomes insolvent or generally does not pay its debts as they become due, or if a petition for relief is filed by the Contractor in a bankruptcy court, or if the Contractor

applies for, consents to, or acquiesces in the appointment of a trustee, custodian, or receiver for the Contractor or any of its assets and property, or makes a general assignment for the benefit of creditors; or in the absence of such application, consent, or acquiescence, a trustee, custodian, or receiver is appointed for the Contractor or for a substantial part of the assets and property of the Contractor and is not discharged within thirty (30) days; or any bankruptcy, reorganization, debt arrangement, or other proceeding or case under any bankruptcy or insolvency or any dissolution or liquidation proceeding is instituted against the Contractor and is consented to or acquiesced to by the Contractor or remains for sixty (60) days undismissed; or the Contractor takes any action to authorize any of the actions described in this subsection.

8. **Remedies for Default.**

8.1 The County shall have the right upon the happening of any Default, without providing notice to the Contractor:

- a. In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part;
- b. To suspend the Contractor's authority to receive any undisbursed funds; and/or
- c. To proceed at any time or from time to time to protect and enforce all rights and remedies available to the County, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under this Agreement, including but not limited to, calling upon any security, letter of credit, or bond and any other action authorized or permitted by applicable law; regulation, or equity.

8.2 **Upon termination of this Agreement for default, the County may elect to pay the Contractor for [services and/or scope of work provided] [goods delivered] up to the date of termination, less the amount of damages caused by the default, all as determined by the County in its sole discretion.** If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements hereunder, and the Contractor agrees to remit any sums due and owing to the County within thirty (30) days of receipt of an invoice therefor.

9. **Remedies Cumulative and Concurrent.** No remedy herein conferred upon or reserved to the County is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the County shall be concurrent and may be pursued separately, successively or together against the Contractor, and every right, power and remedy given to the County may be exercised from time to time as often as may be deemed expedient by the County.

10. **Confidential Information.** The Contractor shall not disclose any documentation and information of any kind or nature disclosed to the Contractor in the course of its performance of duties hereunder without the express prior written consent of the County.

11. **Conflict of Interest.** The Contractor represents and warrants that there exists no actual or

potential conflict of interest between its performance under this Agreement and its engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any extension or renewal thereof, the Contractor shall immediately advise the County in writing thereof.

12. **Assignment.**

12.1 Neither the County nor the Contractor shall assign or transfer its interest or obligations under this Agreement to any third party, without the written consent of the other. The Contractor further agrees to provide a minimum of ninety (90) days' written notice to the County prior to entering into any bankruptcy, merger or consolidation where the surviving entity will be unwilling or unable to accept the Contractor's obligations hereunder, to enable the County to procure the goods or services elsewhere. In the event the cost of procuring such alternate goods or services increases the cost to the County, and/or delays delivery time of any product, in addition to any other remedies available to the County, the Contractor shall pay to the County, as damages, any additional costs incurred.

12.2 Nothing herein shall be construed to create any personal or individual liability upon any employee, officer or elected official of the County, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties of this Agreement.

13. **Delegation of Duties.** The Contractor shall not delegate the Contractor's duties under this Agreement without the prior written consent of the County.

14. **Indemnification.**

14.1 The Contractor shall defend, indemnify and hold harmless the County, its employees, agents and officials from any and all liabilities, claims, suits, or demands including attorney fees which may be incurred or made against the County, its employees, agents or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Agreement by the Contractor or anyone under agreement with the Contractor to perform duties under this Agreement. The Contractor shall not be responsible for acts of gross negligence or willful misconduct committed by the County.

14.2 The Contractor shall also defend, indemnify and hold harmless the County, its employees, agents and officials from any and all liabilities, claims, suits, or demands including attorney fees which may be made against the County, its employees, agents or officials by any third party arising from the alleged violation of any third party's trade secrets, proprietary information, trademark, copyright, patent rights, or intellectual property rights in connection with the Contractor's work under this Agreement.

14.3 Unless notified by the County in writing to the contrary, Contractor shall provide defense for County, its employees, agents and officials in accordance with this Article 14. Contractor shall allow County to participate in said defense of County, its employees, agents and officials, to the extent and as may be required by the County and the Contractor shall cooperate with County in all aspects in connection therewith.

15. **Integration and Modification.** This Agreement sets forth the entire agreement between the

parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of the party sought to be bound thereby.

16. **Fee Prohibition.** The Contractor warrants and represents that it has not employed or engaged any person or entity to solicit or secure this Agreement, and that it has not paid, or agreed to pay any person or entity a fee or any other consideration contingent on the making of this Agreement. If any suit, claim, or demand shall arise concerning such a fee, the Contractor agrees to indemnify and hold harmless the County, from all such claims, suits or demands.

17. **No Partnership.** Nothing contained in this Agreement shall be construed in any manner to create any relationship between the Contractor and the County other than expressly specified herein and the Contractor and the County shall not be considered partners or co-venturers for any purpose on account of this Agreement.

18. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Maryland and Baltimore County, Maryland.

19. **Recitals and Conflicting Terms.**

[19.1] The Recitals are hereby incorporated into this Agreement. The Contractor acknowledges that any Purchase Order issued on or after the effective date of this Agreement is also hereby incorporated and made a part of this Agreement, provided, however that any preprinted terms and conditions of any purchase order or other ordering document issued by the County in connection with this Agreement that are in addition to or inconsistent with the terms and conditions of the Agreement, shall not be binding on the Contractor and shall not be deemed to modify this Agreement.

[19.2] In the event of a conflict between the Bid (including standard specifications) and this Agreement, the provisions of this Agreement (without the conflicting terms in the Bid) shall prevail.

[19.3] If a conflict arises between the provisions of this Agreement and any Purchase Order, the provisions of this Agreement shall prevail.

[USE FOR CAPITAL IMPROVEMENT ONLY] [19.4 In the event of a conflict between this Agreement, the Baltimore County Department of Public Works' Standard Specifications For Construction And Materials, and the Standard Details For Construction, the parties hereto agree that the provisions of this Agreement shall prevail.]

20. **Severability.** If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

21. **Time is of the Essence.** TIME IS OF THE ESSENCE WITH RESPECT TO PERFORMANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

22. **Funding.** The failure of the County to appropriate sufficient funds in any future fiscal year to provide funds for this Agreement shall entitle the County to terminate this Agreement without prior notice to the Contractor.

23. **Counterparts.** This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

24. **Ownership of Goods.** All finished or unfinished work or work product, reports, or goods that are the subject of this Agreement [DELETE IF NOT APPLICABLE: including any licenses or consents acquired by the Contractor for performance hereunder,] shall be and shall remain the property of the County.

25. **Discrimination Prohibited.**

25.1 In the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this Agreement, the Contractor shall not:

a. Fail or refuse to hire, or discharge, any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test;

b. Limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test; or

c. Request or require genetic tests or genetic information as a condition for hiring or determining benefits.

25.2 All solicitations or advertisements for employees shall state that the Contractor is an equal opportunity employer.

26. **Reports / Information/Inspections / and Audits.**

[DELETE IF NOT APPLICABLE: 26.1 The Contractor shall furnish the County with the following reports or information [insert reporting requirements]: Reports produced for the County under this Agreement should be on recycled and recyclable paper printed on both sides.

[26.2] At any time during normal business hours and as often as the County may deem necessary, the Contractor shall make available to and permit inspection and copying by the County, its employees or agents, of all records, information and documentation of the Contractor related to the subject matter of this Agreement, including, but not limited to, all contracts, invoices, payroll, and financial audits. Contractor shall retain all records, information, and documentation of the Contractor related to this Agreement,

including but not limited to, all contracts, invoices, payroll, and financial audits for at least three (3) years after the termination of this Agreement.

[DELETE IF NOT APPLICABLE: 26.3 The County may request the Contractor, at the expense of the Contractor, to have performed an independent audit of the Contractor's financial information including, but not limited to, balance sheets, statement of revenue and expenses, and receipts and disbursements. The independent auditor selected shall be subject to the approval of the County.]

[DELETE IF NOT APPLICABLE: 26.4 All prime Contractors and MBE/WBE subcontractors are required to report monthly to the County through an online system called PRISM at www.baltimorecountymd.gov/go/mwbe under MWBE directory/Vendor Compliance. If the Contractor cannot submit this report on time, the Contractor must notify the County MBE/WBE office and request additional time to submit the report. Failure of the Contractor to report in a timely manner may result in a finding of noncompliance. The County, in its sole discretion, may require additional reports regarding MBE/WBE. Questions regarding the use of this system can be directed to the MBE/WBE Officer/Liaison at 410-887-3119 or 410-887-3407.

27. Regional Cooperative Purchasing.

27.1 The Contractors must submit semi-annual statistical reports via email in an Excel format prescribed by the County for the periods of January to June and July to December each year. Reports are due, without notice, to the County on August 1 and February 1, respectively, following the end of each six-month period. Failure of the County to remind the Contractors that the reports are due does not relieve the Contractors of the responsibility of submitting the reports on time. The semi-annual reports must show the dollars spent in connection with this contract by the participating entities and may show other reporting categories mutually agreed upon by the County and Contractor. Failure to submit the reports on time constitute unsatisfactory performance under the terms of the contract.

28. **Notice.** Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or at such other address and/or such other individual as a party may identify in writing to the other party:

**FOR THE COUNTY:
[Contact Name and/or Job Title
address
telephone number
email address
fax number]**

**[IF DEEMED NECESSARY ADDITIONAL CONTACT FOR THE COUNTY:
Contact Name, and/or Job Title
address
telephone number
email address
fax number DELETE IF NOT APPLICABLE]**

[IF DEEMED NECESSARY] **BALTIMORE COUNTY OFFICE OF LAW:**
County Attorney
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420
(410) 296-0931 (fax) [DELETE IF NOT APPLICABLE]

FOR THE CONTRACTOR:
[Contact Name and Job Title
address
telephone number
email address
fax number

[IF DEEMED NECESSARY] **[ADDITIONAL CONTACT] [DELETE IF NOT APPLICABLE]**
FOR THE CONTRACTOR:
Contact Name and Job Title
address
telephone number
email address
fax number]

[DELETE IF NOT APPLICABLE: 29. **Recycled and Recyclable Products.** Any goods delivered under this Agreement that require packaging must be packed in recycled and recyclable materials.]

[DELETE IF NOT APPLICABLE: 30. **Compliance With Federal and State Confidentiality Law.**

30.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all laws and regulations including, but not limited to, the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320 *et seq.*, as the same may be amended from time to time and implementing regulations including, but not limited to, 45 CFR Parts 160 and 164, as the same may be amended from time to time, the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§4-301 *et seq.*, as the same may be amended from time to time, and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (February 17, 2009), as amended. This obligation includes but is not limited to:

- a. As necessary, adhering to the privacy and security requirements for protected health information and medical records under federal HIPAA, HITECH, and State MCMRA and making the transmission of all electronic information compatible with the federal requirements; and
- b. Providing good management practices regarding all health information and medical records.

30.2 The Contractor must execute a business associate agreement, when and if required by federal or state laws and/or regulations, as the same may be amended from time to time.

30.3 Protected Health Information as defined in the HIPAA regulations at 45 CFR 160.103 and 164.501, as, the same may be amended from time to time, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan,

public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

31. **Political Contribution Disclosure Affirmation.** The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, as the same may be amended from time to time, which require that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, of at least \$100,000.00, to file with the State Board of Elections certain specified information to include disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

32. **No Waiver, Etc.** No failure or delay by the County to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the County from exercising any such right, power, or remedy at any later time or times.

33. **Survival.** Those sections in this Agreement which by their nature are intended to survive, including but not limited to Sections 4 (Contractor's Representations and Warranties), 10 (Confidential Information), 14 (Indemnification), 26 (Reports/Information/and Audits), shall survive the termination of this Agreement.

[USE FOR CAPITAL IMPROVEMENT ONLY] 34. **Applicable Laws, Codes, Ordinances, and Regulations.** The services and/or scope of work to be provided under this Agreement shall be performed competently and with due care, and in accordance with all applicable laws, codes, ordinances, regulations (including but not limited to the Baltimore County Department of Public Works' Standard Specifications For Construction and Materials and the Standard Details For Construction).

[INSERT ANY SPECIAL CLAUSES HERE, SUCH AS WARRANTIES, LIQUIDATED DAMAGES, ETC.]

IN WITNESS WHEREOF, it is the intent of the parties that Contractor has signed this Agreement under seal and further, that the parties have executed this Agreement the day and year first written above.

WITNESS:

[INSERT LEGAL NAME OF CONTRACTOR]

Federal Identification No. _____

By: _____ (SEAL)

[Insert Name]

[Insert Title]

WITNESS:

BALTIMORE COUNTY, MARYLAND

By: _____

Fred Homan

Date

Administrative Officer

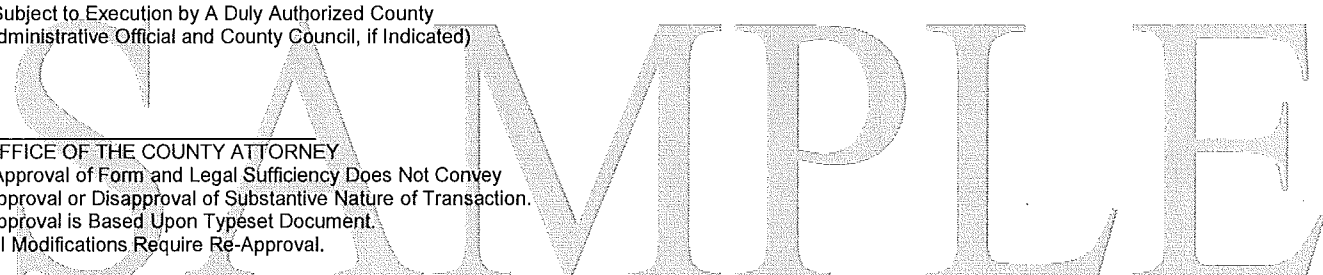
APPROVED FOR FORM AND LEGAL SUFFICIENCY*

OFFICE OF BUDGET AND FINANCE:

(Subject to Execution by A Duly Authorized County Administrative Official and County Council, if Indicated)

OFFICE OF THE COUNTY ATTORNEY

*Approval of Form and Legal Sufficiency Does Not Convey Approval or Disapproval of Substantive Nature of Transaction. Approval is Based Upon Typeset Document. All Modifications Require Re-Approval.



REVIEWED AND APPROVED:

[INSERT DEPT. AND DEPT. HEAD]

BALTIMORE COUNTY COUNCIL

By: _____

Chair

Date

ATTACHMENT A

[SERVICES AND/OR SCOPE OF WORK TO BE PERFORMED] [GOODS TO BE PROVIDED] [FOR CAPITAL IMPROVEMENT CONTRACTS: TIME FRAME OR COMPLETION SCHEDULE WITH INTERIM BENCHMARKS, AS APPLICABLE]

SAMPLE

THE ABOVE ARE IN ADDITION TO ANY OTHER SERVICES AS SET FORTH IN THE [REQUEST FOR PROPOSAL # / REQUEST FOR BID #] AND THE BID RESPONSE.

ATTACHMENT B

[INSURANCE INFORMATION]

SAMPLE

ATTACHMENT C
CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title]_____ and the duly authorized representative of [business] _____ (the "Business") and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

B. BID/PROPOSAL AFFIDAVIT AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Procurement Affidavit dated _____, and executed by (me) (_____) for the purpose of obtaining the contract to which this Affidavit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____
Name:
Title:
(Authorized Representative and Affiant)